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ABSTRACT

The California State Board of Education authorized the study to document the overall costs of special education due process fair hearings to all parties--the parents, local education agencies, and the state. The study also analyzed the factors that enter into the costs of hearings, and some conclusions were drawn and recommendations made for reducing the costs. Data were collected from three main sources: the state Office of Special Education, the local education agencies, and the parents of students involved in fair hearings. Data were analyzed in terms of state government costs, issues in fair hearings, costs to parents, costs to local education agencies, legal counsel and mediation, hidden costs, and availability of records. Among findings were that the most frequently reported issue prompting fair hearings was payment by public education agencies for nonpublic school placement, that state level hearings conducted by hearing officers were on the average six times more costly than panel hearings for the parents responding to the study, that certain cost saving features were reported already in use by local education agencies, and that legal counsel tended to be the single costliest element in fair hearings for local education agencies and parents. Among appendixes are sample letters, a survey packet for local education agencies, and matrixes of mean parent and mean local education agency costs. (SB)

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THE COST OF SPECIAL EDUCATION DUE PROCESS FAIR HEARINGS AND APPEALS IN CALIFORNIA

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Prepared under Grant No. 57-B201-80-3333-7101 from the California State Department of Education

FINAL PROJECT REPORT

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September 26, 1980

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FOREWORD

STATEMENT OF FUNDING

The study reported here is one of a group of studies in Special Education conducted by Decision Development Corporation. This study was conducted from May 1, 1980 through July 31, 1980, and extended to September 30, 1980, under the auspices of the Special Studies supported by Grant No. 57-B201-80-3293-7101 from the California State Department of Education to Decision Development Corporation.

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This study was conducted by Gerald P. Peterson, Principal Investigator, and Sue F. Ayer, Project Assistant.

Thanks are expressed to all who so generously assisted and cooperated in this study: Personnel at the state Office of Special Education, the local education agencies in California, and the special education agencies in other states; the California Association of Private Special Education Schools; and the parents of special education students.

Gerald Peterson

Principal Investigator

September 26, 1980

Date of Submission

EXECUTIVE SUMMARY

The costs of procedural due process/fair hearings have created a new drain on the administrative budgets of public education agencies since the enactment in 1975 of Public Law 94-142, the Education for All Handicapped Children Act. The dimensions of this financial stress in California were unknown because there has been no systematic method of reporting these costs. Education agencies and parents have expressed the need to reduce the costs of fair settlement of disputes over identification, evaluation, placement or free appropriate education of children with exceptional needs.

The purpose of this descriptive study was to document the costs of fair hearings in special education to the parents, the local education agencies, and the state government. In addition to summarizing total costs, the study analyzed the issues prompting fair hearings, the distribution of cost elements, and the comparative costs of panel hearings, officer-conducted hearings, and state administrative appeals. Policy implications are discussed and recommendations made for reducing fair hearing costs and improving the recording and dissemination of information on costs.

Information was collected from three main sources: the State Office of Special Education, local education agencies, and the parents of pupils involved in fair hearings. Some cost information was also collected from other states for purposes of comparison. A computer search was undertaken that revealed no other studies devoted specifically to costs of fair hearings.

The investigators developed a cost-factor matrix, submitted it to a panel of experts for review, and sent it to all school districts and county offices of education in California that had reported a fair hearing during the eight-month period from October 1979 through May 1980. A similar cost-factor report form was distributed to the parents by courtesy of the local education agencies and the California Association of Private Special Education Schools.

Conferences with staff in the Office of Special Education yielded access to the initial data base of 170 fair hearings, aided in interpreting the records, and provided information on fair hearing costs at the state government level. Raw data from parents and local education agencies were processed to yield ranges and means for each cell in the cost-factor matrix.

The products of the study include the cost-factor matrix which will assist local education agencies and parents in estimating potential costs and recording actual costs for fair hearings, and a report of findings and recommendations for action by local education agencies and the Department of Education.

SUMMARY OF FINDINGS

Part 1. State Government Costs

1.1 The Office of Special Education conducted approximately 102 fair hearings and 44 appeals during the period October 1, 1979 through May 31, 1980. An additional 35 fair hearings were scheduled but withdrawn by the initiating party.

1.2 The costs of hearings conducted by state hearing officers were not recorded separately from costs of panel hearing appeals and so have not been analyzed separately. However, appeals are assumed to make up a smaller proportion of total costs than hearings because they were fewer and easier to process. Appeals have been discontinued by SB 1870.

1.3 The Office of Special Education reported total personnel costs for fair hearings and appeals during the eight-month study period were $141,800, of which $86,638 was for hearing officer services and $18,236 for hearing officer expenses. Remaining personnel costs included the fair hearings coordinator and secretary, contract administration, and legal counsel. Nonpersonnel costs for fair hearings over the same period, including indirect costs charged by other state units, were $12,520, bringing total state government costs to $154,320, or an average $1,057 per state-level hearing or appeal.

1.4 Costs are expected to increase under SB 1870. The elimination of panel hearings increases the work load of state hearing officers and other personnel. Required mediation conferences necessitate employing and training mediators. The experience of another state with similar fair hearing procedures (Connecticut) suggests that both costs and numbers of hearings and mediations in California may be expected to rise in the next few years.

Part 2. Issues in Fair Hearings

2.1 The most frequently reported issue prompting fair hearings was payment by public education agencies for nonpublic school placement. However, multiple issues were reported in almost one-third of the fair hearings. No general correlations of issues with costs were possible. Implementation costs were highest for public agencies in hearings where the issue was nonpublic school placement, especially in residential settings.

Part 3. Costs to Parents

3.1 State-level hearings conducted by hearing officers were, on the average, six times more costly than panel hearings for the parents responding to this study. The mean cost to parents for 15 hearing officer hearings was $2,681, compared with $411 for 21 panel hearings and $166 for 9 appeals. (These figures are adjusted means, computed after dropping

the highest cost report in each of the three categories.) There is some evidence that hearing officer hearings may be more legalistic and adversarial than panel hearings, provoking each party to spend more in trying to match the other's defense.

3.2 The highest average cost elements for parents were attorney and advocate fees, independent evaluations, and time lost from work. Other frequently reported costs were expert witness fees, transportation, duplication of materials, and telephone and postage. Other costs less frequently reported were child care, subpoenas, secretarial service, private school tuition, and additional consultations, including psychological counseling.

Part 4. Costs to Local Education Agencies

4.1 Hearings conducted by state hearing officers cost local education agencies more on the average than did hearings conducted by a panel. The adjusted means were $3,541 and $2,322 respectively. Although additional organizational costs for panel hearings were reported, they were not a major cost element either in terms of direct expense or in time spent by personnel.

4.2 Local education agency staff spent more time on state officer hearings than on panel hearings; the adjusted means were 84.9 and 67.4 staff hours, respectively. Personnel costs reflect this difference; the adjusted mean total personnel cost was $1,474 for officer hearings, compared with $1,067 for panel hearings.

4.3 In most local education agencies the Director of Special Education or person with equivalent position spent more time than any other one person on all phases of fair hearings. Other personnel spending large amounts of time in most local agencies were, approximately in descending order, teachers, psychologists, classified staff, miscellaneous administrative staff, program specialists, and speech and language therapists. A few agencies also reported principals heavily involved. Superintendents were frequently involved but did not average more than six hours per hearing. Nurses and social workers were seldom involved.

4.4 Major nonpersonnel costs included legal counsel, panel members' fees and expenses, independent assessments, and occasional high implementation costs, usually tuition and/or other expenses connected with nonpublic school placement. Other nonpersonnel expenses reported were substitutes, expert witnesses, duplication, recording, transcription, travel, telephone and postage.

4.5 One very large school district ("X") accounted for nearly one-third of the fair hearings in the data base and was analyzed separately. This district selected six representative fair hearings with reported costs averaging $437, and one appeal that cost $152. These reports do not include indirect costs charged by other departments, such as legal services. The district has assigned a psychologist full

time as fair hearings coordinator and has added one full-time classified employee for fair hearings work. The district estimated some 80 fair hearings had taken place during the eight-month study period, only 35 of which had been recorded by the state Office of Special Education. If the six cases selected were representative, the total cost for the eight-month study period was $36,037. This figure is based only on the average of the six cases reported plus estimated appeal costs. It does not include any other direct or indirect costs.

4.6 Certain cost-saving features were reported already in use by local education agencies. Preventive measures included negotiation, compromise, willingness to make adjustments and reassessments, involvement of other public agencies, parent education, and open communications with nonpublic schools. Procedural measures included using on-call legal counsel, eliminating attorneys, using written evidence instead of testimony, holding hearings during office hours, and making travel serve multiple purposes.

4.7 Other measures were suggested by local education agencies to further reduce costs. Preventive measures included improving home-school communication and trust; willingness to modify to meet student and parent needs; sharing cost-saving information; using mediators. Agencies wanted the State Department of Education to expedite decisions, provide knowledgeable legal counsel to local agencies, and hire hearing officers with knowledge of the laws. They suggested that hearing officers reduce irrelevant and repetitious testimony and clearly define the issues. Legislative and regulatory changes suggested were to clarify regulations, abolish panel hearings, use arbitration, define admissible evidence more clearly, improve eligibility criteria, and stop all changes for two years. A suggestion applying to all local education agencies was -- be adequately prepared.

Part 5. Legal Counsel and Mediation

5.1 Legal counsel tends to be the single costliest element in fair hearings for local education agencies and parents. However, it was reported as a cost factor only in about half the fair hearings in this study.

5.2 The cost of legal counsel varied from zero up to thousands of dollars, depending on its source. Besides private attorneys, parents consulted free or low-cost Legal Aid attorneys, friends, or parent advocates with legal expertise. Local education agencies consulted county or staff counsel, attorneys serving on contract, or private outside attorneys. Private attorneys tended to be the most expensive option but at times may have provided the optimum level of legal service, according to the reports.

5.3 Mediation has been found to reduce legalism, adversarial pressure, and emotional stress on participants, while still preserving procedural fairness and producing the best possible educational result. California law (SB 1870) now requires that a state-conducted mediation conference precede every fair hearing unless one party requests that it be waived.

Part 6. Hidden Costs

6.1 Due process/fair hearings generate high costs at several levels of government and society. Those documented in this study represent only the tip of the iceberg. The hidden costs are not easily measured or even, in some cases, fully identifiable. Nevertheless they exist and must be noted in any cost analysis. They include the extra care, time and effort invested to avoid fair hearings; the time and resources spent in preliminary negotiations, reassessments and other steps leading up to hearings; the cost of preventive fair hearings to avoid setting costlier precedents; inservice to outline procedures and update them when regulations change; writing, printing and revision of handbooks and forms; and personal expenses and time lost from other responsibilities by public employees and private persons.

Part 7. Availability of Records

7.1 Systematic methods of gathering and recording statistics on the cost of fair hearings have not been used by the State Department of Education or the majority of local education agencies. A need for such methods has been expressed by administrators at state and local levels.

RECOMMENDATIONS

The following recommendations are made in response to needs identified in the responses to and findings of this study:

Local Education Agencies

1. To reduce the likelihood of costly fair hearings, local education agencies should direct efforts toward improving home-school communication and two-way information flow, building trust between school personnel and parents, and showing willingness to negotiate, compromise, reassess pupils and modify programs and policies. Communications with other public agencies and with nonpublic schools should also be kept open. Every effort should be made to avoid an entrenched position or adversarial confrontation.

2. To implement Recommendation 1, inservice should be held for all personnel who may become involved in fair hearings, with emphasis on developing effective techniques for confict resolution and human relations skills, as well as a review of current regulations and timelines.

3. To reduce actual fair hearing costs, local agencies should adhere to required timelines, fully document all steps in the instructional planning process, prepare adequately for conferences and hearings, and use written evidence as much as possible.

4. To insure that costs are minimized without sacrificing optimal legal services, local education agencies should review procedures for obtaining legal counsel. Strategies might include employing staff counsel, contracting with counsel for the county or other public agency, or contracting with private attorneys.

Department of Education

5. To insure comprehensive projections of state costs, the Office of Special Education should review its cost reporting procedures for fair hearings and develop procedures for monitoring the cost of mediations. It may be advisable to develop a method of recording the distribution of major costs for every hearing, including local agency costs for personnel time, legal counsel and implementation, as well as the state's administrative, indirect, and hearing officer costs.

6. To obtain comprehensive cost estimates and to meet a need of local education agency administrators, the Office of Special Education should consider developing and making available to local agencies a standardized system for recording fair hearing costs as they occur, including estimates of staff time spent on each step of the process.

7. To meet the need of local education agencies for sharing information on cost reduction and effective procedures, the Office of Special Education should explore means of coordinating the dissemination of such information to local agencies.

8. To reduce the delays reported in the release of fair hearing decisions and meet the timelines prescribed by law, the Office of Special Education should review its procedures for processing fair hearing decisions.

9. To resolve questions about the qualifications and performance of some hearing officers, the Office of Special Education should consider re-evaluating standards for hearing officers and offering further training in procedural skills and knowledge of changing regulations.

10. The finding that the cost of transcribing hearings in California is much lower than in other states suggests that the Office of Special Education should continue its policy of transcribing hearings only when it is required.

11. In view of SB 1870 having eliminated panel hearings and instituted mediation conferences, the Department of Education should expect both a greater number of fair hearing requests and higher costs for processing fair hearings and mediations.

12. To reduce the legalistic and adversary quality of due process procedures as well as the overall costs, the Office of Special Education should continue to implement as fully as possible the mediation conference now prescribed in California law and should strongly encourage local education agencies and parents to participate in the mediation conference.

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I. INTRODUCTION

BACKGROUND

Under Public Law 94-142, the Education for All Handicapped Children Act passed by Congress in 1975, children and their parents received the guarantee of procedural due process in decisions related to special education. This guarantee includes the right to a fair and impartial administrative hearing in any of the following decisions by a public education agency: identification of a pupil as having exceptional needs; assessment of a pupil; implementation of an individualized education program for the pupil; and appropriate school placement.

When a dispute over these decisions occurs between a parent and a public education agency, either party may initiate a due process / fair hearing. Decisions rendered by the impartial fair hearing officer are binding, subject to review by the state education agency or to judicial action. Although the right to a fair hearing is guaranteed by federal law, the procedures for conducting such hearings are left to the states, and the procedures vary from state to state.

Fair hearings in California have been conducted in two different ways. Until October 1979 all fair hearings were conducted by a three-person panel, with administrative costs borne by the local education agencies. One panel member would be selected by the local education agency, one by the parent, and the third by mutual agreement between the first two. If they could not agree on a third member within five days, the county superintendent selected the third. Panelists were likely to be special education administrators from other school districts, university professors in special education, private school administrators, psychologists, or public members. The decisions of fair hearing panels could be appealed to the State Superintendent for administrative review by a state hearing officer.

After SB 1149 took effect on October 1, 1979, a second type of fair hearing became possible. Either party initiating a fair hearing then could request the state to conduct the hearing in the person of a trained hearing officer. In effect, this procedure constitutes a direct appeal, bypassing the panel process entirely. The decisions of hearing officers are not subject to further administrative appeal. However, like the panel decisions, they may be challenged in court.

The enactment of SB 1870 in July 1980 has completely eliminated the panel fair hearing. All fair hearings will now be conducted at the state level by hearing officers who serve under contract with the state. Of the 14 presently serving, 9 are attorneys, 2 are retired school superintendents, and 3 are state college and university professors in special education.

During the 1979-1980 school year both panel hearings and hearing officer hearings were held, the latter outnumbering the former. Appeals of local panel decisions were also conducted by the same state hearing officers. The appeal is frequently simply a "paper review" of the evidence and testimony that was presented to the panel. However, the officer may require additional evidence or testimony in what seems very like a second hearing but is technically still an appeal. Understandably, some confusion has arisen over terminology for designating these appeals and the two types of hearings. For that reason, the following definitions are offered to clarify the terms used in this study.

DEFINITIONS

Fair Hearing: A formal hearing conducted by an impartial hearing officer or panel of impartial citizens to resolve disagreement between a local education agency and a parent or guardian over the evaluation, placement, or provision of appropriate educational program for an individual with exceptional needs. The right to such a hearing is guaranteed to parents and public education agencies by provisions of Public Law 94-142. (This procedure may also be known as Due Process Hearing, Impartial Due Process Hearing, or Due Process Administrative Hearing.)

Hearing Officers: Persons employed on contract with the State Office of Special Education and assigned by that office to conduct fair hearings and appeals of the decisions of panel fair hearings.

Hearing Officer Hearing or State Level Hearing: A fair hearing conducted by a hearing officer assigned by and paid by the state. There is no administrative appeal of this type of hearing.

Panel Fair Hearing: A fair hearing conducted by a panel of three persons, with all arrangements handled by a local education agency. One person is selected by each party to the disagreement, with the third panel member chosen by the first two.

Fair Hearing Appeal: A state-level administrative procedure conducted by a state hearing officer to review the decision of a local panel fair hearing. The appeal may consist of simply a "paper review" with no new evidence, or it may include the presentation of new evidence.

THE PROBLEM

Now that procedural due process is mandated by Public Law 94-142 and California law and regulation, public education agencies face a new and costly drain on administrative budgets already stressed by inflation and Proposition 13. At times the cost of the hearing has been higher than the cost of providing the disputed services (Moore, 1978).

The dimensions of this financial stress on districts, counties and the state are not known, since agencies do not routinely report their costs for fair hearing procedures. Furthermore, agency budgets will not reflect these costs because it is almost impossible for an agency to forecast its fair hearing expenses. One never knows when the boom will lower, nor how heavily; there may be no such thing as the "average" fair hearing.

Local administrators experiencing either the current stress of astronomically costly hearings or the dread of future ones have begun to demand relief in the form of additional funding to meet these extraordinary expenses. They have also begun to share strategies for reducing their costs or preventing fair hearings without jeopardizing due process (Johnson, 1979).

The expense of costly fair hearings has burdened some parents as well as administrators, although parent complaints may be less credible to administrators who feel embittered by costly battles. But parents too have experienced high attorney fees and time lost from work. It may be assumed that most participants on both sides would welcome ways to resolve these disputes more amicably and at lower cost.

PURPOSE OF THE STUDY

Responding to these needs, the State Board of Education, through the Office of Special Education, has authorized this study in an effort to document the overall costs of special education due process fair hearings to all parties--to the parents as well as local education agencies--and to the state as well. In addition to a summary of total costs, the study provides an analysis of the variety of factors that enter into the costs of hearings, and some conclusions are drawn and recommendations made for reducing these costs.

RELATED STUDIES

To determine what other studies of fair hearing costs might exist, a computer search was made for relevant literature in the Educational Resources Information Center file. In addition, queries were sent to the National Association of State Directors of Special Education, the Council for Exceptional Children, the federal Bureau of Education for the Handicapped, and the Southwest Regional Resource Center at the University of Utah. Finally, a query was sent to the chief education officer of every other state and the District of Columbia (Appendix A). No other studies of fair hearing costs per se have been located; however, costs were discussed in several documents referenced in this report. In addition, responses from many of the states brought information on fair hearing costs.

The cost of special education fair hearings to parents has received almost no notice in the literature. However, in a study of the implementation of due process in Massachusetts, parents were found to pay as much as $4000 per hearing for lawyers and specialists, with the average cost for a lawyer at $800 to $1000 (NASDSE, 1978). Current data from Massachusetts indicate parents now pay an average $1000 to $1200 in legal fees and about $150 for expert witnesses per fair hearing (Anrig, 1980).

Somewhat more attention has gone to the costs borne by state and local education agencies. Occasional reference is made in the literature to state and local level costs. These were said to include hearing officers' fees or salaries, travel expenses, training and administrative expense, legal counsel, and personnel time (Moore, 1978; NASDSE, 1978; Stevens, 1979). A few state education agencies have costed out the different factors in some detail, but apparently no complete analysis has been published. Current data on costs in other states are discussed in Chapter III, Part 4 of the findings of this study.

Local education agencies in California were polled on their costs in a survey conducted by the Association of California School Administrators in 1979. Summary cost figures for panel fair hearings were collected from 50 school districts and county offices of education throughout the state, but with no breakdown of individual cost factors. The costs of state-level hearing officer hearings were not included because this type of hearing had not yet become an option. The survey found local agencies spending from $375 to $24,500 to prepare, conduct and follow up on a panel fair hearing. These figures included the cost of administrators, teachers, psychologists, nurses, language and speech specialists, attorneys, secretaries, consultants, correspondence, telephone calls, and reimbursement of personnel involved in hearings. They did not include costs of implementing the decisions; these were estimated at $100 to $20,000 per hearing for additional services and programs (Johnson, 1979; some data from unpublished text of article).

A consensus of responses to the ACSA survey from local agency administrators indicated three problem areas related to their agency costs:

1. The need for review of laws and regulations.
2. The need for more equitable sharing of costs by all parties.
3. The relationship between parents and private special education schools.

All the suggestions for reducing the number of fair hearings were summarized into these four categories:

1. Increased parent involvement
2. Increased special education services
3. Improved staff training
4. Revised state and federal regulations.

The authors recommended curtailing fair hearing panels as much as possible by developing sound practices and administrative guidelines in local education agencies.

The unpublished full text of the ACSA report (available from the authors) quotes many comments about costs from respondents, including the recommendation that the party not supported by the panel decision should bear all the expenses incurred by both parties. Other comments: "Fair hearing panels are very expensive and time-consuming." "Time involved in setting up the logistics is overwhelming..." "The process is very expensive. The school district is extremely vulnerable regardless of resources or efforts." It was frequently suggested that hearings before a single state officer are preferable to panels.

No other published data on the costs of fair hearings in California appear to exist. A survey authorized by the state Office of Special Education collected some limited cost data from the nine local education agencies in California that reported the most fair hearings from July 1978 through July 1979. While that study is still in progress and not primarily cost-oriented, it will show average costs per hearing and costs of outcomes for the nine districts (Bertken, 1980).

II. METHODS OF THE STUDY

OVERVIEW OF THE STUDY DESIGN

This study was conducted to collect and analyze data on the costs incurred by all parties to special education due process fair hearings in California. It was designed as a descriptive study, with data collected from three main sources: the state Office of Special Education, the local education agencies, and the parents of pupils involved in fair hearings. Some cost information was also collected from other states for purposes of comparison, and a computer search was made to identify other related studies. A cost-factor matrix was developed and sent to all districts and county offices of education that had reported a fair hearing during an eight-month study period. A similar cost-factor report form was distributed to the parents by courtesy of the local education agencies and the California Association of Private Special Education Schools. A series of conferences with staff in the Office of Special Education yielded access to the initial data base, aided in interpreting the records, and provided information on fair hearing costs at the state government level. Raw data from parents and local education agencies were computer-processed to yield ranges and means for each cell in the cost-factor matrix. The findings and recommendations are contained in this report, which is available to the public through the State Department of Education.

THE DATA BASE

As defined in the project proposal, the initial data base was to consist of all special education fair hearings recorded by the state Office of Special Education as having occurred between October 1, 1979 and May 31, 1980. The first task in data collection was to locate these cases by compiling a list of fair hearings reported to the state. As the project assistant began this task at the Office of Special Education, some problems quickly became apparent that necessitated redefinition of the proposed data base. Among these were problems of insufficient information, postponements, cancellations, uncompleted cases, and under-reported hearings.

The record of hearings held during the early part of the eight-month study period was quite sketchy, sometimes lacking even the exact date and designation of type of hearing or appeal. Lists for the latter part of the period were extremely well organized, however. The disorganized state of the early records may be attributed to staff shifts and to the newness of officer-conducted hearings and reporting procedures. The investigators decided to include in the initial data base every reported hearing that might possibly fall into the study period even when dates were not specified. Later contacts with districts and counties both added and subtracted a few of these questionable cases, producing a revised data base.

A second problem in defining the initial data base was that a sizable proportion of the fair hearings listed as scheduled had not taken place. Evidently settling on a date for a fair hearing is not an easy matter. Even when all legal timelines are carefully followed in setting the date, last-minute problems can cause repeated delays, with hearings rescheduled several times. Repeated postponements frequently signal those cases which eventually become cancelled, or what amounts to the same thing, "postponed indefinitely."

Many of the hearings reported as scheduled had been cancelled when the initiating party withdrew the request for the hearing, sometimes just days before the scheduled date. It was reasonable to assume that the preparation time put into these abortive hearings had been an expense to both parties. Therefore, in order to obtain more representative cost data, it was decided to include in the initial data base all hearings scheduled to be held during the study period, whether or not they took place.

The uncertainty of dates for hearings posed another problem. The postponement of hearings scheduled in the spring could mean they would actually take place after May 31, beyond the end of the study period. Some may even have been cancelled or indefinitely postponed. It is estimated that about 40 of these hearings, pending as of May 31, were retained in the initial data base; only two occur in the survey returns from local education agencies.

In another group of cases the hearing had been held but the decision had not yet been rendered. Reported costs for such hearings could be unrealistically low, since a school district would not yet be able to report any costs for implementation and followup, and under an adverse decision these costs can be quite high. It is not possible to say how many of these undecided cases occur in the initial data base; about six occur in the survey returns.

Finally, the under-reporting of one type of fair hearing offered some complications. During the study period fair hearings could take either of two forms: (a) Three-person panel convened and paid for by the local education agency; or (b) Hearing before a state-assigned officer, with no further administrative appeal. (This second alternative is sometimes called the "bypass" option and functions as a direct appeal.) In addition, the decision of a panel could be appealed to the state, with the appeal conducted by a state-assigned officer, Federal regulations (Title 45, Sec. 121a.508) require all special education fair hearings to be reported. For panel hearings, this information was to be submitted on State Department of Education Form 794-010 within two weeks after the hearing occurred (Appendix B). All appeals from panels and all fair hearings before state hearing officers were automatically recorded at the Office of Special Education as hearing officers were assigned to conduct them. However, many local panel fair hearings went unreported to the state when the decisions were not appealed, according to personnel at the Office of Special Education.

TABLE 1. DATA BASE BY TYPE OF HEARING OR APPEAL

TYPE OF HEARING OR APPEAL	PROPOSED DATA BASE	INITIAL DATA BASE	REVISED DATA BASE
Hearings by state hearing officer	110	120	120
Panel hearings not appealed	75	10	16
Panel hearings appealed to state	140	33	33
Type of hearing unknown	---	7	45?
TOTAL HEARINGS & APPEALS	325	170	214?

TABLE 2. DATA BASE BY STATUS OF HEARING OR APPEAL

A. INITIAL DATA BASE: Fair hearings known at beginning of study before contacting local education agencies

STATUS	PANELS ONLY	PANELS APPEALED	STATE-LEVEL HEARINGS	TYPE UNKNOWN	TOTALS
HEARINGS/APPEALS COMPLETED					
District X	--	5	18	--	23
All other LEA's	10	21	43	5	79
HEARINGS/APPEALS PENDING					
District X	--	1	9	1	11
All other LEA's	--	4	24	--	28
HEARINGS/APPEALS CANCELLED					
District X	--	1	10	--	11
All other LEA's	--	1	16	1	18
Subtotal District X	--	7	37	1	45
Subtotal Other LEA's	10	26	83	6	125
TOTALS	10	33	120	7	170

B. REVISED DATA BASE: Fair hearings known from data return or telephone contact with local education agencies

STATUS	PANELS ONLY	PANELS APPEALED	STATE-LEVEL HEARINGS	TYPE UNKNOWN	TOTALS
HEARINGS/APPEALS COMPLETED*	16	19	41	6	82
HEARINGS/APPEALS PENDING*	--	5	24	--	29
HEARINGS/APPEALS CANCELLED*	--	2	18	3	23
Subtotal Other LEA's	16	26	83	9	134
Subtotal District X**	--	7	37	36?	80?
TOTALS	16	33	120	45?	214?

* District X not included in these categories because distribution not known.

** District X subtotals are the same as in Part A above, plus about 36 additional cases whose distribution is unknown.

While under-reporting was known to exist, its extent had not been known, nor could it be known without a much more extensive study than this one. For this reason the project proposal had specified that only those cases known to the state would be part of the data base. On the basis of information available when the study was proposed, the total fair hearings and appeals in the eight-month study period were estimated at 325 (see Proposed Data Base in Table 1). After lists at the Office of Special Education had been checked, however, the initial data base was reduced to 170 cases (see Initial Data Base, Table 1). Finally, when returns began coming in, cost data turned up for about a dozen hearings which either (a) were thought to be reported by districts but not by the state; or (b) had never been reported at all. One very large district (District "X") admitted to almost half again as many hearings as had been reported to the state but could not furnish exact data on the date, type, or number of hearings. The data base was expanded to include these cases, although the exact totals were uncertain (see Revised Data Base, Table 1). While it may have been more practical to simply rule out any uncertain cases, it seemed important for this descriptive study to include all possible sources of data.

In summary then, the modifications tended to widen rather than narrow the parameters of the data base, since the initial data base proved far smaller than the project proposal figures had indicated. Even with modifications the 325 fair hearings in eight months estimated in the proposal had dwindled to about 170 identifiable cases in the data base. This figure was later revised to approximately 214 after contact with districts, and it included about 36 additional hearings from District "X".

COST-FACTOR MATRIX

A matrix showing the array of cost factors appeared to be an ideal format for use both as a data collection instrument and as a product of the study. The blank matrix was expected to be useful to local education agencies as a device for recording and projecting costs. After completion of the study, the same matrix showing average costs statewide would be useful for comparison purposes.

The state, in its request for project proposals, had identified a variety of direct and indirect cost factors related to fair hearings and appeals. These factors, combined with others brought up in preliminary project conferences, were incorporated into three matrices to be used as survey instruments for the parents, the local education agencies, and the state (see Appendices C-3, C-4, C-6 and E).

Of the three matrices, the most complex are those completed by the local education agencies. The lists of possible expenses for parents and for the state are fairly brief, while those for the local agencies are quite extensive, largely because so many different people from one school district or county office may be involved in a hearing. The investigators decided to acquire data in as much detail as possible

on the different personnel whose time might be taken up with hearings. Hence the matrix shows a breakdown of personnel costs into subdivisions of ADMINISTRATIVE, INSTRUCTIONAL, and SUPPORT, with spaces to identify staff roles in each category. It was decided to ask for estimates of both hours spent and dollar values of the time, so that the basis for personnel costs could be easily compared by districts and counties with different salary scales. The detailed breakdown was also an effort to identify specifically which cost factors, if any, appear to contribute most to the overall high costs of some fair hearings. For similar reasons non-personnel costs were subdivided into eleven categories. Several that were not anticipated have been discussed in the findings.

The matrices for parents and local education agencies each became the nucleus of a brief questionnaire entitled "Cost Report Form" to ascertain what was at issue in the hearing, which party requested it, the date the hearing was scheduled, whether it actually took place, whether it was heard by a hearing officer or local panel, and whether it was appealed. At the request of the state Office of Special Education, two open-ended questions were added to the local agency cost report related to cost-saving features in use and suggestions for further cost reductions.

The three cost report forms, along with accompanying letters of introduction and explanation, were presented to a five-member panel of experts for review. The panel included county and district directors of special education, and staff from the Office of Special Education. The panel made a great many suggestions for improving and clarifying the report forms and letters; most of them were incorporated into the final versions. One very important change was to simplify the cost report form for local agencies by separating it into two different forms, color-coded. One would apply only to state hearings before a hearing officer (Appendix C-3) and the other would apply to panel hearings and appeals (Appendix C-4).

More significant than any editorial changes, however, was the expert panel's caution that this study could never uncover the immense additional hidden costs surrounding due process fair hearing procedures; it would show only the tip of the iceberg. There is no way these hidden costs can be shown in a cost-factor matrix, and their true extent will never be fully known. The panel urged that these hidden costs receive mention in this report so that the California Board of Education might know the magnitude of the cost problem. They are discussed in Chapter III, FINDINGS, Part 6.

The revised cost report forms and accompanying letters were next submitted to the Data Acquisition and Review Committee of the State Department of Education. This committee must approve all surveys authorized by the Department to be sent out and returned by local education agencies. The packet submitted to the committee contained all

materials to be sent out in the study, including a draft for a letter of authorization from Chief Deputy Superintendent Donald R. McKinley to local agency superintendents, encouraging them to participate in the study.

After approval of the survey materials by the committee, the letter of authorization was signed by Dr. McKinley and returned to the investigators, who then duplicated the survey materials and prepared packets for mailing.

Although pre-testing would have been useful it was not possible, given the short timeline and the time of year this study was undertaken. By the time of approval by the Review Committee in mid-May (less than two weeks after the study was funded), local agency administrators were already heavily involved in year-end activities--budget hearings, the spring/summer round of fair hearings, and preparations for staff vacations and changeovers. The risk was that the survey forms would be put aside or lost in the rush to finish other work, and in fact this did occur in about one-third of the local agencies surveyed, as revealed by a telephone followup of those not responding.

Parents in each fair hearing had to be contacted indirectly, since the names of persons involved in fair hearings are confidential data not available to the investigators. It was decided to send the parent surveys to the local education agencies and ask each one to forward the materials to all parents involved in the fair hearings being reported. In addition, one other attempt was made to reach parents who might not receive these materials from local agencies. Another 100 letters and parent report forms were sent to the California Association of Private Special Education Schools for distribution by its members to parents known to have had fair hearings.

In a 100 percent sampling of the data base, a packet of survey materials was sent to every local education agency shown in state records to have had a fair hearing scheduled between October 1, 1979 and May 31, 1980. Each agency received one cost report form per hearing, in the appropriate version for its type--panel or hearing officer. Where the type of hearing was not known, both forms were sent. Forms were mailed covering 125 fair hearings in 82 local agencies. These included 15 county offices or special education service regions, 3 state schools, and 64 school districts. The latter included 10 elementary, 10 secondary, and 44 unified school districts. An additional 45 known hearings in one local agency (District "X") were handled differently as described later. The packets included the following items (numbered as they appear in Appendix C):

C-1. Letter of authorization from Dr. McKinley.

C-2. Letter from Decision Development Corporation to local education agencies, describing the study, explaining how to fill out cost report forms, and requesting agencies to contact parents.

C-3. Fair Hearing Cost Report for Local Education Agency (green), to be used for reporting only those fair hearings conducted by a state fair hearing officer.

C-4. Local Panel Fair Hearing Cost Report for Local Education Agency (buff), to be used only to report costs of local panel fair hearings and appeals of panel decisions.

C-5. Letter from Decision Development Corporation to parents, explaining the study and asking them to participate by returning a completed cost report.

C-6. Parent Cost Report form (white).

The packets also contained blank postage-paid Decision Development Corporation letterhead envelopes for the local agencies to address and use in forwarding letters and cost reports to parents, and postage-paid envelopes in which parents and local agencies could return the completed forms.

SPECIAL TREATMENT OF ONE DATA SET: DISTRICT "X"

The above procedures were modified for one very large school district with 45 reported fair hearings. So large a number made it unique in the study; no other local agency had more than eight reported, and the great majority had only one each. For this district, completion of an individual cost report for each fair hearing would be virtually impossible because the task would require far more staff time than was available. However, because this district had generated almost one-third of the cases in the initial data base, it was a very important sector of the study--an essential source of data without which the study results would be much less useful.

To resolve this dilemma the project assistant met with staff at District "X" to discuss alternative methods of reporting approximate costs of fair hearings without imposing an undue burden. It developed that even more hearings had been held than had been reported--according to staff estimates, about 80--but the exact number could not easily be determined because the district records are not indexed by date, and therefore hearings held only during the study period were not readily identifiable. Also, cost data, either in the aggregate or case by case,

would not be readily available, because district accounts were not set up to show the breakdowns requested, and accounting personnel were totally occupied with budget preparations. However, the fair hearings coordinator (a psychologist assigned full time to administering fair hearings) and a special education staff specialist offered to prepare a cost analysis of a limited number of cases. The question was how to assure that cases selected would be representative of all the district's hearings. Possible methods were random sampling, with or without stratification, and having staff select, on the basis of their familiarity with the cases, those which would represent the range of costs typical of the majority of fair hearings. The investigators decided to rely on staff expertise to select cases rather than random sampling for the following reasons:

1. This study was intended as a descriptive policy study rather than a rigorous statistical analysis.

2. The treatment of data is necessarily exploratory rather than definitive, due to gaps and inconsistencies in the initial data base.

3. Randomization assures validity only for a data base of known and specified parameters. The parameters of this portion of the data base could not be accurately specified, since even the exact number of cases falling in the time period of the study was open to question.

The investigators recognized that having the staff choose the sample cases introduced an element of bias; they might consciously or unconsciously select cases exaggerating district costs. This consideration was dismissed, since it probably could apply equally throughout the study; that is, any local agency could exaggerate in making estimates of its costs.

The investigators and district staff agreed that the district would select six cases in a ratio of one panel hearing to five hearing officer hearings, corresponding roughly to the ratio of case types in the 45 hearings listed by the state. The unreported cases were said by staff to be mostly officer hearings--surprisingly, because such hearings should automatically become known to the state when the officers are assigned; in contrast, panel hearings are frequently underreported because they are handled completely by the local agency. A plausible explanation for this discrepancy may be that changes in both procedures and personnel at state and local level led to disruptions in record-keeping. To complete the district report, it was agreed that a rough estimate would be provided of total district costs for fair hearings over the eight-month study period.

The mailing of parent letters from District "X" presented some difficulties. Shortage of staff and year-end pressures made it unlikely that staff could be spared to forward a letter to every parent involved in a fair hearing. However, after the project assistant offered to personally help the district office prepare the mailing, a CETA aide also became available to assist, and together they prepared the mailing, supervised by the fair hearings coordinator. The mailing list was assembled by the aide from files of fair hearings held through the preceding year.

The 87 parent letters and cost reports mailed out included an excess 42 cases over the original group known to the investigators. The excess probably stems from two sources: (a) unreported cases; and (b) cases occurring through the past year but not during the study period. Since there was no way to exclude the latter group without examining individual files and thus violating the confidentiality of participants, it was decided to send parent letters to the entire group.

ANALYSIS AND PRESENTATION OF DATA

As expected, the initial returns, especially from local education agencies, were sparse. After the deadline for replies had passed, every non-responding local agency received a follow-up telephone call. At this time many of the administrators described difficulties in collecting at this time of year the detailed data requested. A handful simply declined to participate, but most promised to make the effort. A second round of telephone reminders was made after the extension of the study into September. By the end of August, 34 of the 83 local agencies, or 41 percent, had returned the forms. However, this number did not include verbal responses from four large city districts, two urban county offices and one urban consortium, all reporting they had multiple fair hearings but were unable to return the cost-factor matrix forms.

Of the 212 parent forms sent out via local education agencies, only about 37 or 17.5 percent were returned in time to be analyzed, plus 4 from the private schools mailing. (The letter sent via private schools, Appendix D, instructed parents to disregard the form if they had already received one.)

Data on individual cost items were computer processed to yield a range of costs and a mean figure for every cell in the cost-factor matrix, with histograms showing the distribution. The resulting figures for parents and local agencies presented in Chapter III, Parts 3 and 4, reflect a modification of this process, in which all ranges and means were computed <u>after</u> dropping the highest reported figure for that cell. Dropping the outliers on the high end is a statistical procedure that compensates for distortion of the mean by an unusually high extreme. Such an extreme datum might, for example, result from conscious or unconscious exaggeration, or it might simply be normal variance. For the data in this study, dropping the outliers seemed advisable in view of a few extremely high figures scattered throughout the cost reports from both parents and local education agencies. These outliers have been treated independently, receiving special comment in the analysis of findings.

Also treated independently are the returns from the one large district ("X") which submitted cost reports for a sample of six of its estimated 80 fair hearings. These returns were not included in the calculations of ranges and means; instead they appear in a separate cost-factor matrix.

The matrix for state level costs (Appendix E) was completed on the basis of conferences with staff at the Office of Special Education. The resulting data are presented in tabular form and discussed in Chapter III, Part 1.

III. FINDINGS

PART 1. COSTS OF FAIR HEARINGS TO THE STATE GOVERNMENT

The state Office of Special Education estimates that it processed requests for, scheduled, and conducted approximately 146 fair hearings and fair hearing appeals during the eight-month study period. The office estimated that 102 of these were fair hearings and 44 were appeals, a ratio of slightly over 2 to 1. In addition, some 35 hearings were scheduled but were withdrawn by the initiating party, bringing the ratio of fair hearings to appeals handled slightly over 3 to 1. (Once the appeal process is under way it is very unlikely to be stopped; the parties are already locked into their adversarial positions.)

Accounting records at the state office did not distinguish the costs of state-level fair hearings from those of appeals. Therefore, their costs are considered together for each category in this analysis. However, it may be assumed on the basis of information from state personnel that state-level fair hearings make up a far greater proportion of the state costs than do appeals. Not only do the appeals occur half as frequently as hearings, they incur fewer expenses because they are usually a "paper review." The hearing officer simply reviews the testimony and evidence and renders a decision, with none of the arrangements connected with an actual hearing. However, occasionally new evidence or testimony is introduced in an appeal, on petition by either party, and is formally heard by the officer, thus occasioning expenses for recording the hearing, possibly officer travel and per diem, etc.

Table 3 summarizes the costs to the state of administering state-level fair hearings and appeals of panel fair hearing decisions during the eight-month study period. Comments and explanations are as follows:

1. COORDINATOR: The Fair Hearings Coordinator in the State Office of Special Education is employed full time to coordinate and schedule all state-level hearings and appeals and to interview, train, assign and supervise hearing officers. This person also receives and files all reports of panel fair hearings. Occasional travel is required.

2. SECRETARY TO COORDINATOR: The secretary works full time on fair hearings.

3. HEARING OFFICERS: Hearing officers are employed on a long-term contract which specifies the number of hours and fee for services. The contract fee of $125 per day covers the time the hearing officers spend preparing for and conducting hearings and appeals and writing decisions. Some travel is required because fair hearings are held at locations convenient to the parties. Travel costs are reduced when the office is able to assign hearing officers who live nearby. Most hearings take only one working day; a per diem of $46 is paid for longer periods.

TABLE 3: COSTS TO THE CALIFORNIA OFFICE OF SPECIAL EDUCATION FOR ADMINISTERING STATE-LEVEL FAIR HEARINGS AND APPEALS DURING THE PERIOD October 1, 1979 through May 31, 1980

	HOURS	ESTIMATED COST
PERSONNEL COSTS:		
1. Coordinator:	1008	
Salary & benefits		$ 21,462
Travel		312
Per diem		192
2. Secretary to Coordinator	1008	7,860
3. Hearing Officers:		
Contract services @ $125 per day		86,638
Travel & per diem		18,236
4. Contract Administration	300	2,600
5. Legal Counsel	200	4,500
TOTAL PERSONNEL COSTS		$ 141,800
OTHER COSTS:		
6. Recruitment and training of hearing officers (travel and per diem)		2,700
7. Recording of fair hearings:		
Tape recorders (capital outlay)		1,001
Tape cassettes		1,825
8. Transcription of hearings		
Four hearings x 15 hours @ $18 per hour		1,080
9. Hearing officer expenses: Postage, telephone, stationery (excludes tapes, travel, per diem)		455
10. General office expense (supplies, postage, subpoenas, etc.)		400
11. Duplication of forms and decisions, etc.		500
12. Rent: Operation of facilities		1,258
13. Indirect charges from other state units		7,826
TOTAL NONPERSONNEL COSTS		$ 12,520
GRAND TOTAL COSTS TO STATE OFFICE OF SPECIAL EDUCATION for 146 hearings and appeals, 10/1/79--5/31/80:		$ 154,320
APPROXIMATE AVERAGE COST TO STATE FOR EACH STATE-LEVEL HEARING OR APPEAL:		$ 1,057

4. CONTRACT ADMINISTRATION: This item covers the time spent on hearing officer contract paperwork by an analyst in the State Office of Special Education.

5. LEGAL COUNSEL: It is estimated legal counsel in the State Office of Special Education spent about 200 hours in the eight-month study period keeping up with the latest state and federal regulations and checking all decisions in state-level hearings and appeals for consistency with the regulations.

6. RECRUITMENT AND TRAINING: The cost of travel and per diem for an all-day training session early in October 1979 for prospective hearing officers is estimated at $2700. Recruitment interviews were conducted along with the training sessions by the Fair Hearings Coordinator as part of his salaried services included in Personnel Costs, above.

7. RECORDING OF HEARINGS: With the advent of state-level hearings in fall 1979, eight cassette tape recorders were purchased for use by hearing officers at a cost of $1001. This cost may be considered a one-time capital outlay; however, more recorders will be needed with normal wear and tear and with the expected increase in state-level hearings under SB 1870. Cassette tapes purchased over the eight-month period by hearing officers are estimated at $1825.

8. TRANSCRIPTION OF HEARINGS: Fair hearing tapes are transcribed only for those cases which go on to court. The cost of $18 per hour or about $270 per case amounted to $1080 for the four hearings from the study period that went into court.

9. HEARING OFFICER EXPENSES: This figure covers stationery supplies, postage and telephone calls, but does not include cassette tapes, travel and per diem, reported elsewhere.

10-13. These items of general overhead are frequently ignored when program costs are calculated, yet they add significantly to the total cost. RENT and INDIRECT CHARGES are charged to state offices as a percentage of personnel costs.

Discussion

The average cost to the state for a state-level hearing or appeal is $1,057, more than twice the figure of $451.27 recently cited in the Special Education Reporter (Calif. State Dept. Education, June 1980). The latter figure was based only on the hearing officers' fees and expenses for conducting hearings and writing decisions during the past year. Clearly the administrative costs for this program need to be considered as part of the total cost as well.

Additional fair hearing costs will be incurred by the state government under SB 1870. With the elimination of panel hearings, all fair hearing requests go to the Office of Special Education, increasing the work load there. In addition, the law now specifies that each fair hearing will be preceded by a mediation conference conducted informally by the state in a nonadversarial atmosphere. As a result, additional personnel are being employed as mediators by the Office of Special Education. Mediation is reported to reduce the number of disagreements reaching fair hearings by those states using this procedure (see chapter III, Part 6), so the total number of hearings in California may be expected to decrease eventually. For the immediate future, however, costs may be expected to rise, with the influx of additional hearings and the recruitment and training of mediators and additional hearing officers, and their contract fees and expenses. Inflation will also continue to be a factor. It is possible that the total number of fair hearing requests may rise beyond projections based on eliminating panel hearings. By offering a less costly and less confrontive way of settling disputes, the opportunity for a state-conducted mediation may actually stimulate fair hearing requests from persons or agencies that previously were reluctant to fight or to bear the expenses of a fair hearing.

Comparisons with Other States

It may be difficult to adequately compare costs for California with those of other states because administrative expenses are frequently not included in discussions of program costs. As noted earlier, one part of this study was an informal survey of all other states and the District of Columbia to determine whether any systematic study had been made of fair hearing costs. A number of states responded with cost information, but it is not always clear exactly how those figures were calculated or what cost factors were included. With this caution, a brief summary is presented of state-level costs reported from several other states (see Table 4).

The lowest average cost per hearing, $187.50, was reported by the DISTRICT OF COLUMBIA, where all hearings and expenses are considered state-level. The average cost includes hearing officer fees and training funds, but no other cost factors are reported. Hearings last from three to ten hours.

ARIZONA reported that ten state appeals of local hearings in the year ending May 1980 amounted to $2301, averaging $230 per appeal. No further breakdown was provided.

MASSACHUSETTS estimates an average cost per hearing of $368 based on hearing officer fees of $70 per day plus mileage. The state reports this figure does not include indirect costs for typing, mailings, research, overhead, or staff development costs for training, supervision, preparation of manuals, etc. The average cost furnished is comparable to the California figure of $451 for hearing officer fees and expenses, considering the higher travel costs in the much larger state.

TABLE 4: COMPARATIVE FAIR HEARING COSTS FOR STATE GOVERNMENTS FURNISHING DATA

STATE	AVERAGE COST PER HEARING	COMMENTS
DISTRICT OF COLUMBIA	$ 187.50	Hearing officer fees, training
ARIZONA	230	Per appeal
MASSACHUSETTS	368	Hearing officer fees ($70) + travel
ILLINOIS	385	Hearing officer fees, training, transcription
OKLAHOMA	800	No breakdown
GEORGIA	837	Hearing officer expenses, court reporter and transcript
SOUTH DAKOTA	1000	Hearing officer fees ($100) + recording costs
CALIFORNIA	1057	Hearing officers, administration and indirect costs
HAWAII	1767	Hearing officer fees ($75), tapes and transcription, exhibits, technical assistance
CONNECTICUT	1918*	Hearing officer fees, some mediators, court reporters, transcripts
MONTANA	4299	No breakdown

*Average cost per fair hearing for Connecticut reflects additional cost of mediated settlements not costed out separately.

ILLINOIS, which held 187 hearings over the ten months from July 1979 through April 1980, reported a state-level cost of $72,008, or about half the California total for a roughly comparable period and number of hearings. The average cost per hearing is $385. However, no administrative or indirect costs are included in this report, which lists a breakdown of $21,748 for hearing officer fees, $36,973 for training, and $13,287 for transcripts. (Another $13,287 is also paid for transcripts by local education agencies in Illinois.) The average hearing is three to five hours long and takes ten hours of hearing officer time. The average cost is $385, less than the California average direct cost of $451; the hearing officer fees in Illinois also appear considerably lower than in California.

OKLAHOMA reports an average cost per hearing of $800, closer to the California total figure, but no data were given on cost factors or whether the figure includes local agency costs.

In GEORGIA the average cost per hearing is listed as $837 and includes hearing officer expenses (not further clarified) plus court reporter and verbatim transcript of each hearing. Evidently the hearing officers are employed by local education agencies and there is a process of appeal to a state hearing officer.

In SOUTH DAKOTA, where mediation settles three out of four potential hearings, the average hearing cost is $1000. The figure is based on $100 per day for hearing officers plus court recording costs but apparently does not include administrative or indirect costs.

In MONTANA four of the five hearings held to date ranged in cost from $1194 to $8035, for an average cost of $4299. The cost of the fifth hearing was not supplied. The size of these figures suggests that Montana included local agency costs in the totals, although again no details were given.

A very sophisticated report of fair hearing costs came from HAWAII, which furnished a table of projected costs through 1986-87 based on hearings held in the 1979 calendar year. The estimated costs for 1980-81 appear in the following table. Projections for future years increase at six percent per year. It is not clear how much of the fair hearing is administered by the state and how much by local agencies. Assuming a breakdown similar to that in other states, the following are the estimated costs per hearing for 1980-1981 at the state level:

Hearing Officer services	$ 375	(5 days @ $75)
Exhibits	79	
Technical Assistance	289	
Tapes	24	
Transcription services	1,000	(court stenographer/transcriber for preparation for court appeals)
TOTAL	$ 1,767	

No indication is made of indirect costs--training, scheduling, overhead, for example--although technical assistance may cover these costs.

A state with a situation prophetic for California is CONNECTICUT, where fair hearings were conducted by a three-person panel until mid-1978. Since then, most hearings have been conducted by one hearing officer. The hearing officers are all part-time contractors with the state. Since 1975 Connecticut has also offered voluntary mediation by a state-appointed mediator. Figures provided by Connecticut for the past four fiscal years show a dramatic upsurge in both hearings and mediations, and in costs for both. The cost data offered do not separate mediations from hearings:

		Number of Hearings	Number of Mediations
1976-77	$15,624	18	36
1977-78	24.837	20	69
1978-79	53,506	51	66
1979-80*	92,073*	48*	54*

*Incomplete--up to 5/15/80

These figures are for direct costs only and include fees paid to hearing officers, cost of mediators not already employed by the Department of Education, and the costs of court reporters and transcripts. If these direct costs are averaged year by year they amount to the following average costs:

	Average cost per hearing only (Mediation part of the base)	Average cost per hearing and/or mediation
1976-77	$ 868	$ 434
1977-78	1242	360
1978-79	1049	811
1979-80	1918	1705

In the first column above, the cost of mediations is considered part of the cost of conducting the average fair hearing; in the second column the figure represents the average cost of either a mediation or a fair hearing.

The indirect costs of administering fair hearings in Connecticut are not itemized in the state report but are reported to include hearing officer training, scheduling, legal research, and maintenance of files. To carry out these and other duties the state employs 1.6 full-time equivalent attorneys, one educational consultant, a complaint officer, and a secretary.

Discussion

The individual cost factors reported by other states seem fairly comparable to those in California, with one exception. Transcription costs, where mentioned, seem inordinately high--over $16,000 for 187 hearings ($139 per hearing) in Illinois, and $1000 per average hearing in Hawaii. It is likely that transcription costs contribute a large

portion of the state's high direct costs for the average hearing in Montana, Connecticut, South Dakota and Georgia. Most of the states listed here indicated that all fair hearings are transcribed. California evidently enjoys considerable savings by transcribing only those hearings which go on to court.

In summary, where states report low average or total costs for fair hearings it is safe to assume that only direct costs, or even just a part of the direct costs, are being considered. In general, the more details given in any report of costs, the higher the total figures tend to be.

Part 2. ISSUES DISPUTED IN FAIR HEARINGS

Federal and state law and regulations prescribe that due process/fair hearings be limited to the following issues: the identification, evaluation or educational placement of a child with exceptional needs, or the provision of a free appropriate public education for the child. Within these four areas, particularly the last two, there are a great many possibilities for disputes to arise between the parents of handicapped children and public education agencies.

The disputed issue most frequently reported in this study was the placement of a student in a nonpublic school setting--or more specifically, whether such placement would be made and paid for by the public education agency under the free and appropriate education provision. It is not surprising that this issue should be the most frequent basis for fair hearings since it is the one with potentially the heaviest financial impact on either the parent or the education agency. Special education administrators have indicated that issues having lower cost implications for either party are far more likely to be resolved informally short of a fair hearing.

Table 5 shows the frequency distribution of issues reported for the fair hearings in this study. Multiple issues were reported in almost one-third of the hearings, making the totals here greater than the number of hearings (46) reported in the study. Several of the issues specified as "other" by respondents could have been grouped into the categories listed on the survey form, but they are listed here as they appeared in the reports from local education agencies. Parents were not queried about issues.

The available data do not provide any general correlation of issues with costs. However, in those hearings where the cost of nonpublic school placement is at issue, particularly placement in residential settings, the implementation cost for public agencies has sometimes been very high after an adverse decision. At least one parent also claimed private school expenses as a fair hearing cost.

TABLE 5. FREQUENCY OF ISSUES IN FAIR HEARINGS

Issue	Number of hearings in which issue was disputed: Hearing-officer hearings	Panel hearings
Placement of pupil in nonpublic school	10	10
Identification of pupil as handicapped	6	1
Content of Individualized Education Program	5	2
Placement of pupil in public school	4	4
Assessment of the pupil	4	4
Other, as follows:	10	1
Extended school year		
Mental health component		
Need for related services	(3)	
Eligibility for special education services		
Tongue thrust therapy		
Payment of residential nonpublic school cost		
Residential placement		
Retroactive payment of residential nonpublic school cost prior to placement by district		
Issues never clarified		

District "X": Issues in six representative hearings:		
Placement of pupil in public school	2	1
Placement of pupil in nonpublic school	1	
Assessment of pupil	1	
Content of Individualized Education Program	1	
Other, as follows:		
24-hour residential nonpublic school setting	2	
Provision of speech services and adaptive PE services	1	

Part 3. COSTS OF FAIR HEARINGS TO THE PARENTS

Cost reports were returned by 41 parents for 53 fair hearings and appeals, or about one-fifth the estimated 214 hearings and 33 appeals in the revised data base.

TABLE 6. PARENT COST REPORTS RETURNED

Hearing officer hearings	16
Panel hearings	24
Appeals of panel hearings	12
Type of hearing not indicated	1
	53

The parents who responded to this study reported spending a grand total of $107,300 on the 53 hearings and appeals. Panel fair hearings were much less costly to parents than hearing officer hearings, as shown by the averages and totals in Table 7. The left side of the table shows the total reported costs and mean costs for each type of hearing or appeal. Figures on the right side reflect total costs and adjusted[1] means, calculated after dropping the highest cost reported for each type of hearing or appeal. It should be noted that the three single highest reports--one in each hearing category--amount to nearly half the total parent cost, and that the single highest cost report amounts to over one-third of the total reported cost.

TABLE 7. TOTAL AND MEAN PARENT COSTS BY TYPE OF HEARING AND APPEAL

TYPE OF HEARING/APPEAL	ALL REPORTS INCLUDED			HIGHEST REPORTED	HIGHEST REPORT EXCLUDED		
	No.	Total	Mean		No.	Total	Mean
Hearing officer hearing	16	$80,025	$5,002	$39,813	15	$40,212	$2,681
Panel hearing	22	13,567	617	4,930	21	8,637	411
Fair hearing appeals	10	4,487	449	2,095	9	2,392	266
Type not indicated or not separately reported	5	9,221					
TOTALS	53	$107,300	2,025	$46,838	45	$51,241	$1,139

1/ Adjusted mean refers to the mean computed after dropping the high outlier and is used throughout this report to minimize distortion of the mean by unusually high extremes. It was used routinely for all averaging of more than two items in a data set.

These returns indicate that for the parents responding to this survey, the state-level hearing conducted by a state hearing officer averaged six times more costly than a panel hearing. In hearing officer hearings the parents tended to spend more for attorneys, parent advocates and independent evaluations. Claims of lost work time also tended to be higher for officer hearings. While there is no way of knowing whether these findings are representative of all cases--and they may well not be--there may be a plausible explanation. One observer suggests that the hearing officer hearing may seem more threatening to parents, more of an adversarial proceeding than the panel hearing where the parent could insure at least one sympathetic member. If this observation is valid, parents may have felt they had to spend more to make their case before a hearing officer. The local education agencies also tended to spend more on officer hearings (as detailed in Part 4 of this chapter), indicating a possible spiral "arms race" effect, with each party trying to match the other's defense resources. Comments from parents and school administrators supported this view, as noted later in this report, Part 5.

Attorney fees tended to be the largest single cost item reported by parents. The mean cost for attorneys was $1,836, based on reported costs ranging from $30 to $5,100; the mean does not include a high of $8,043. However, attorney fees were not frequently reported; the figures given here are based on only nine reports. Three parents reported that legal fees were absorbed by someone else--Legal Aid, a private school, or an attorney friend. The majority of parents who indicated no legal costs at all presumably did not use attorneys. Legal expenses were not associated with appeals.

There were 15 parents who reported paying parent advocates for assistance with fair hearings. The adjusted mean was $237, but this cost ranged from $10 to $700. For the five parents reporting advocate costs for appeals, the adjusted mean was $163. Again, for a few parents, advocate costs were absorbed by private agencies.

Another large expense for many parents was the time lost from work to prepare for and attend fair hearings. Nearly all the parents reported time lost from work which ranged from 2 to 80 hours, with the average around 14 hours. The adjusted mean cost of lost work time was $336, with reports ranging up to $6,555. Less work time was lost in appeals, however, where the average was about 7 hours or $157.

Among the items which made fair hearings expensive for some parents were the independent evaluations conducted when they disagreed with the findings of the local education agency. Psychological evaluations tended to be most costly. For 17 parent reports these ranged from $50 to $4,000, averaging $595. However, one other parent reported a cost of $32,000 for an extensive psychological evaluation covering a residential period of months. Educational evaluations averaged $198, with 16 reports ranging from $15 to $600 and a top figure of $1,500. Medical evaluations were almost as costly, but fewer were reported. Nine of the ten parents reporting spent less than $500 on these, with an adjusted mean of $180; the most expensive one was $649.

Obtaining expert witnesses to testify at fair hearings was an expense for about one-third of the parents reporting. The adjusted mean cost was $148, based on reports ranging from $25 to $600, with a top report of $1,200. This cost occurred in only three appeals.

Two other cost items were frequently reported by parents. The cost of transportation for hearings and appeals averaged around $23; the highest figure reported was $580. The expense of duplicating materials used in the hearings averaged about $16; in appeals, duplication costs were nominal.

Certain other expenses were not as frequently reported as one might expect. Child care apparently was not a cost for most parents; the few who did report it spent around $20 per hearing. Only three parents reported an expense for subpoenas; this ranged from $50 to $150.

Six parents reported secretarial costs, for an adjusted mean of $59. Telephone and postage expenses were reported by nine, with adjusted mean of $18. Three parents reported costs for additional consultations, including psychological counseling for themselves, that ranged from $28 to $800. Finally, four parents reported miscellaneous other expenses including one worth noting--$3,000 in private school tuition, attributed by the parent as a fair hearing cost.

The completed Parent Cost Matrix (Appendix F) presents the adjusted mean for every cost item reported by parents. Figures for items mentioned in fewer than one-third of the reports are shown in italic type.

Parent Comments

Many of the parents responding took time to add personal comments about their costs. Some of these comments are quoted here; others are found elsewhere in this report. The first note is from a parent who reported receiving many hours of volunteer help and support:

> *"I truly have no idea as to how many hours went into the hearings or the cost, as I feel I was one of the fortunate ones who was able to get help from outside agencies....I do have one question that disturbs me and many other parents that I am in contact with. Why can't the Special Education Department be more rigid in the qualifications and experience of Special Education Psychologists than they are now? Some of these so-called professionals are extremely damaging to our children, needless to say to themselves..."*

> *"We are so pleased to know that you're making a study like this. The year before was even more expensive, and if we have to go through this again this year we know it's going to run us even more because the advocate and witnesses fees have gone up. We will be very anxious to see your results on this study. Thanks a lot for letting us help you in any way."*

"No amount of money can explain the hours and hours of thinking things out for the best appropriate placement for your child. The mental stress on parents and family can not measure time or cost."

"This (hearings process) has been taking place and dragging on for over 1½ years. The state drags its feet, the child, the parents and the professionals are left bewildered."

"Stress to entire family -- cost is inestimable. Cost in time to study law and get it interpreted."

"The mental and physical stress placed on the family and child is unbelievable and unnecessary."

Part 4. COSTS OF FAIR HEARINGS TO LOCAL EDUCATION AGENCIES

As noted earlier in this report, no claim of statistical validity is made for the findings because neither random nor universal sampling was feasible. Therefore, the results of this descriptive study should not be used as a basis for any generalizations about the cost of fair hearings. They simply reflect the experience of those persons and agencies responding to the survey.

The total number of local education agencies that responded to the survey by completing a cost report matrix was 34, or 41 percent of the 83 agencies in the initial data base. Approximately 10 other agencies responded to the survey in some other way not adapted to this analysis, bringing the level of response to about 50 percent./[1]

Completed returns for 31 hearing officer hearings were received from 25 local education agencies, in addition to 5 representative reports from District "X". Completed returns for 15 panel hearings were received from 10 agencies, plus one representative case from District "X". Of the 15 panel hearings, 6 were appealed. The returns from District "X" are analyzed in a separate section below and are not included in the general discussion.

Comparative Costs of Panel and Officer Hearings

On the average, local education agencies spent more money on state-level hearings conducted by hearing officers (adjusted mean $3,541) than on local panel hearings (adjusted mean $2,322). This finding was a surprise, as it contradicted the view frequently expressed by special education administrators--in their conversations with the investigators, in their comments on the survey form, and in the ACSA report (Johnson, 1979). Panel hearings were expected to be more costly because the local agency had to bear the organizational expenses of obtaining hearing rooms and panelists, recording and transcribing hearings, issuing subpoenas, duplication of evidence and copies of decisions, and possibly others. Expenses borne individually by the parties would include their costs for witnesses, attorneys or advocates, and for extra evaluations of the pupil (Jacobs, 1978). In fact, although the organizational expenses were part of the cost reported by the local agencies, they did not form a major part, either in terms of direct expense or in personnel time spent on them.

1/ Among these latter responses was the single highest cost report from any local education agency: $24,554.84. Because the cost data were not submitted in the categories requested, they are not included in the calculations below. About $23,000 of the cost of this hearing was attributed to county office personnel costs which presumably included the county counsel.

Tables 8 and 9 illustrate the adjusted means for personnel time and expense plus nonpersonnel costs for the two types of fair hearing. Nonpersonnel costs amounted to somewhat more than half the mean cost for both types. Separate data are shown for three time phases in fair hearings: the period of preparation, the hearing itself, and the period of follow-up and implementation. During the preparation period and actual hearing the nonpersonnel costs averaged slightly higher for panel hearings than for officer hearings. This was the expected finding, and it probably reflects higher costs associated with setting up these hearings. However, the total nonpersonnel cost averaged higher for officer hearings. This finding appears to result from extremely high implementation costs in two officer hearings where the public agencies received adverse decisions; it may not be representative of all such hearings.

Personnel costs in almost every category were higher for officer hearings than for panel hearings. Table 8 shows the distribution of time spent on both types of fair hearings by three categories of staff--amdinistrative, instructional, and support--in the three time phases of the hearings. The table shows clearly the larger average amounts of time spent on officer hearings over panel hearings in nearly every instance, resulting in overall adjusted means of 84.9 staff hours for officer hearings and 67.4 staff hours for panel hearings. The corresponding cost figures in Table 9 show the same pattern, with average totals of $1,474 personnel costs for officer hearings compared with $1,067 for panel hearings.

It is not clear why more personnel time was spent on hearing officer hearings. There may have been the expectation that the hearing officer would be a more rigorous or qualified decision-maker and therefore more careful preparation was needed. It has also been suggested that the officer hearing, unlike the panel hearing, is the last resort before going to court and so the tendency is to bring in as much expertise as possible. One nonpublic special educator with experience as panelist, advocate and expert witness has commented that the great majority of panel hearings are not especially costly or complicated, much less adversarial, and more appropriate for resolving issues in special education. While this observer's viewpoint may not be entirely unbiased, it is seasoned by extensive experience and may represent a constituency that will press for reinstatement of the panel option abolished under SB 1870.

TABLE 8. ADJUSTED MEAN HOURS SPENT ON PANEL FAIR HEARINGS AND HEARING OFFICER HEARINGS BY LOCAL EDUCATION AGENCY PERSONNEL

PERSONNEL	PREPARATION PERIOD		ACTUAL HEARING		FOLLOW-UP PERIOD		ALL PERIODS COMBINED	
	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing
Administrative Staff	9.8	15.2	7.8	9.0	4.3	4.4	21.9	28.6
Instructional Staff	8.3	10.6	9.8	15.5	9.0	3.8	28.1	29.9
Support Staff	6.5	11.8	7.5	10.7	3.4	3.9	17.4	26.4
TOTAL PERSONNEL TIME	25.6	37.6	25.1	35.2	16.7	12.1	67.4	84.9

TABLE 9. ADJUSTED MEAN PERSONNEL AND NONPERSONNEL COSTS FOR LOCAL EDUCATION AGENCIES

PERSONNEL	PREPARATION PERIOD		ACTUAL HEARING		FOLLOW-UP PERIOD		ALL PERIODS COMBINED	
	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing	Panel Hearing	Officer Hearing
Administrative Staff	$ 186	$ 286	$ 147	$ 175	$ 88	$ 87	$ 421	$ 548
Instructional Staff	146	181	144	265	121	45	411	491
Support Staff	79	163	112	180	44	92	235	435
TOTAL PERSONNEL COST	411	630	403	620	253	224	1,067	1,474
ADJUSTED MEAN TOTAL NONPERSONNEL COST	395	265	354	222	506	1,580	1,255	2,067
TOTAL	$ 806	$ 895	$ 757	$ 842	$ 759	$1,804	$2,322	$3,541

Distribution of Personnel Cost

Time and expense data were collected for a variety of staff positions. Of the average 84.9 staff hours spent on hearing officer hearings, an average 31.3 were spent by the Director of Special Education (or person with equivalent position). In most agencies this administrator was the staff person most heavily involved in all three phases--preparation, the hearing, and its aftermath. Other personnel reporting large time commitments in the majority of local agencies were (approximately in descending order): teachers, psychologists, classified staff, miscellaneous administrative staff, program specialists, and speech and language therapists. In a few agencies principals were also heavily involved. Superintendents were frequently involved, especially in the preparation phase, but they did not average more than six hours per hearing. These observations apply to hearing officer hearings. The pattern of time spent was similar for panel hearings, but the averages were lower in almost every staff category. In either type of hearing, nurses were very seldom reported as a personnel expense, and a school social worker was reported in only one case.

The pattern of time and expense was also similar for appeals, except that psychologists averaged more time on these than did special education administrators. However, with only six appeals reported in this study, no firm conclusions can be drawn.

Distribution of Nonpersonnel Costs

1. Legal Counsel: Legal counsel is a major element in the high cost of fair hearings. This study revealed little difference in the cost of legal counsel or the frequency of this expense between the two types of hearings. Where this expense occurred, the averages were $1,200 for officer hearings, $1,228 for panel hearings, and $590 for appeals. It was reported as an expense in about half of the hearings of each type. Other local education agencies may have received legal counsel on some other basis than direct cost. The cost of legal counsel and its alternatives is discussed more extensively in Part 5 of this chapter.

2. Panel Members: A second major cost for many agencies is panel member fees and/or expenses. These were listed in 11 of the 15 panel hearing reports (and in the report from District "X"). The adjusted mean cost of $215 per hearing is based on panel member costs ranging from $96 to $750; one agency reported a high of $900.

The cost of panel members is a complex element in the total cost picture. Even when panel members do not bill the agency for their services, they are ususally professionals who are losing time from their own work and incurring other expenses which may not appear in any cost survey. These costs are part of the hidden cost "iceberg" discussed in Part 6 of this chapter. The panelists (and expert witnesses as well) may seem to cost an agency "nothing" because they serve

under reciprocal arrangements with other agencies to provide such expertise. In fact, there is a cost in terms of time lost from regular work, but since such costs are not referable to an agency's own current fair hearing they may never be reported as fair hearing costs. A county administrator who served as a panel chairperson for another agency's hearing describes this situation very well:

> *"I found that an important and time-consuming function of the chairman was to attempt to get the parties to agree on the issues before the hearing actually occurred. These identifiable costs form an indirect subsidy of the fair hearing process by other programs and budgets. Our County Office cost alone for this one day hearing was $672. The bill should contain one more day of clerical time to cover the post-hearing detail involved. This would make the actual costs $728 for the chairman alone."*

The writer goes on to detail further "actual and identifiable" expenses for other panelists, travel, meals, conference time, and duplication which he doubts have been reported to the state as fair hearing costs by the agency involved in the fair hearing, to which his county sent his $672 bill. Since that agency did not reply to this study's survey, these extensive panel member costs are not reflected in the results.

3. Independent Assessments: Independent assessment costs were infrequent but could be high. This cost was reported in only five officer hearings and in no panel hearings; four reports averaged $181, while the fifth was $350.

4. Substitutes: For most local agencies substitutes were not an appreciable cost. Only four agencies with panel hearings reported this cost, at an average $32. For the eight agencies having substitute expenses for officer hearings, the cost averaged $102. To reduce this cost, one district advises using written evidence as much as possible.

5. Expert Witnesses: Only five agencies reported this cost; the lowest three averaged $70, but one reported $1,000 and another was $3,820. Expert witnesses cost most agencies virtually nothing directly, presumably because districts reciprocate with each other in providing staff as expert witnesses. However, this practice does constitute a hidden cost when personnel time is lost from regular work to provide this service.

6. Duplication of Materials: This was a fairly routine cost for all public education agencies, averaging $39 for panel hearings and $47 for officer hearings. The only duplication cost reported for an appeal was $62.

7. Recording and Transcription: Recording was not a high cost item; it was under $50 in 18 of the 19 agencies reporting it. Almost no local agencies made transcriptions of fair hearings; in the two that did, the cost was slightly over $100 per hearing.

8. Subpoenas: These were not an expense to local agencies. The one agency reporting this cost for an officer hearing may have erred because the hearing officer has authority to issue subpoenas and customarily is the one to do so. No subpoena costs were reported for panel hearings.

9. Travel and Per [illegible]: Virtually no travel expenses were reported for panel hearings [illegible]ly moderate amounts for state-level hearings, where a few age[illegible]s reported average travel costs of about $102. No per diem payments were reported, presumably because all fair hearings were scheduled at [illegible]ions convenient to the parties.

10. Additional Costs: A few agencies reported costs in some categories not listed in the original matrix, including telephone and postage, meals for witnesses, and transcription equipment (a capital expenditure). The most notable "other" cost was tuition and transportation to nonpublic schools, plus room and board in one instance. These costs can mount very high when public agencies receive an adverse decision and must pay these fees retroactively. Two districts reported $3,570 and $19,956 for this type of implementation cost after a hearing-officer hearing. For panel hearings, two districts reported tuition and mileage costs of $3,900 and $1,300. In addition, other districts and counties were still awaiting decisions in hearings that could result in further high implementation costs.

Fair Hearing Costs for District "X"

As described in Chapter II, Methods, cost data were handled separately for one very large school district with some 80 estimated fair hearings. This district submitted a cost analysis for five hearing-officer hearings and one panel fair hearing considered representative of the range of costs typical for fair hearings in that district. The selection of cases for analysis was made by district personnel with extensive experience and familiarity with all fair hearing cases there.

Returns from District "X" have not been included in any of the calculations of ranges and means. They are presented separately in Tables 10 and 11.

1. Average Hearing Cost: The six fair hearings reports returned by District "X" show a much lower average cost than that of other local education agencies. Four of the five officer hearings were under $400; the top figure was $950. The panel hearing cost was $482 and the appeal $152.

TABLE 10. COST OF SIX REPRESENTATIVE FAIR HEARINGS IN DISTRICT "X"

	HEARINGS CONDUCTED BY HEARING OFFICER					PANEL	PANEL
	1	2	3	4	5	HEARING	APPEAL
PERSONNEL							
Administrative Staff	$121	-0-	$197	-0-	-0-	$ 61	-0-
Instructional Staff	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Support Staff	209	276	282	370	183	263	144
TOTAL PERSONNEL	330	276	479	370	183	324	144
NONPERSONNEL COSTS	9	8	471	9	5	158	8
TOTAL COSTS	$339	$284	$950	$379	$188	$482	$152

TABLE 11. MATRIX OF MEAN COST DISTRIBUTION OF SIX FAIR HEARINGS IN DISTRICT "X"

TYPE OF COST	N*	PREPARATION PERIOD	ACTUAL HEARING	FOLLOW-UP PERIOD	APPEAL OF PANEL
PERSONNEL COSTS					
Administrative Staff	(3)	$ 66	$ 61	$ ---	$ ---
Instructional Staff	(0)	---	---	---	---
Support Staff:					
Psychologist	(5)	73	44	19	21
Program Specialist	(4)	31	63	33	7
Secretarial/Classified	(1)	10	---	5	---
Nonpublic school specialist	(3)	74	40	23	116
District Observer	(1)	---	41	---	---
NONPERSONNEL COSTS					
Panel members	(1)	---	150	---	---
Duplication of materials	(6)	7	---	1	8
Recording of hearing	(6)	1	2	2	---
Independent assessment	(1)	---	---	450	---

* N = Number of hearings for which the expense was reported

2. Nonpersonnel Costs: For the most part these were extremely nominal. Only in the most costly hearing did they approximate the costs for personnel; the high expense there was an independent assessment.

3. Legal Counsel: In no case did District "X" report any cost for legal counsel. The possibility that the district is represented by its own staff attorneys in at least some fair hearings suggests this may be an unreported indirect cost.

4. Personnel: A very different distribution of personnel costs is found in District "X", probably because of its large size and complex organization. The greatest amount of staff time spent on fair hearings comes from support staff, primarily from the psychologist who is assigned full time as the fair hearings coordinator. Program specialists and a nonpublic schools specialist are virtually the only other support staff spending time on fair hearings, apart from classified support. Only half the fair hearings had any administrative staff time, and that was limited to time spent by the supervisor of psychological services. No involvement by instructional staff, principals or other administrators was reported.

It is probable that fair hearings in this district do incur considerably more cost than was reported. The cost reports were based on files in the office of the fair hearings coordinator and do not reflect any indirect costs charged against the Special Education Division by other departments, such as legal services. In addition to assigning a psychologist full time as fair hearings coordinator, the district has also added one full-time classified employee to work on fair hearings. Thus, the entire salary of the fair hearings coordinator and one classified employee, as well as portions of other staff positions, should be included in any complete estimate of total costs.

A total cost of $36,037 for the eight-month study period is calculated, based on the district's estimated 80 fair hearings multiplied by the average cost of $437 for the six reported hearings, and adding a figure for seven known appeals based on the cost reported for one appeal. This total rests on two assumptions--that the six fair hearings reported are representative, and that the estimated numbers of hearings and appeals are correct. This figure would not include any of the district's indirect costs.

The coordinator noted that every effort is made to settle disputes before going to fair hearing and felt proud of the district's record of low costs and favorable decisions when disputes did reach the fair hearing stage.

Each of the six hearings reported by District "X" was parent-initiated. The issues prompting them were varied, and in some cases multiple. In two the issue was 24-hour residential nonpublic school placement. Public and nonpublic school placement, assessment, content of the Individualized Education Program, and the lack of speech services and adaptive physical education were at issue in other cases.

Cost-Cutting Recommendations from Local Education Agencies

This study revealed a need felt by many local agency personnel (and parents as well) to vent their frustration and anger about the expense of fair hearings and to explore ways to reduce costs while still meeting the requirements of due process. During the telephone follow-up, administrators frequently said they welcomed the study because the State needs to know how much these hearings cost. Several administrators took the time to write a long letter detailing their frustrations and offering practical suggestions for improving the process. These letters came in response to what one writer considered the most important questions in the whole survey: what cost-saving features local agencies had already put into practice, and what they would further suggest to reduce costs. The responses are summarized here:

Cost-Saving Features Put Into Practice

PREVENTIVE:
- Negotiate, don't litigate. Give the store away.
- Compromise, adjustments at informal reviews, additional assessments, involvement of other public agencies, parent education, open communiction with nonpublic school.

PROCEDURAL:
- Use written evidence as much as possible to save staff waiting time and cost of substitutes.
- On-call legal counsel.
- Eliminate attorneys.
- Combine fair hearings travel with other travel.
- Hold all hearings during office hours.

Cost-Saving Features Suggested for Future:

PREVENTIVE:
- Improve home-school communication and trust levels.
- Be willing to make modifications to meet student and parent needs.
- Use of mediators.
- Share information on cost-saving features used by other agencies.

PROCEDURAL:
- Expedite decisions from State Department of Education.
- State Department of Education should provide knowledgeable legal counsel to local education agencies.
- Hire hearing officers with knowledge of the laws.
- Reduce irrelevant and repetitious testimony.
- Clearly define issue and require testimony to be relevant.

LEGISLATIVE and REGULATORY:
- Improve eligibility criteria by reverting to those of 1974-75.
- Define more clearly what is admissible evidence in fair hearings.
- Clarification of regulations.
- Stop all changes for two years.
- Abolish panels and use state hearing officers.
- Arbitration ("still need to prepare our case for arbitrator")

FINALLY, one respondent put it this way:

"There are no cost saving features. You must be adequately prepared, and it takes time and is expensive."

Part 5. LEGAL COUNSEL AND THE ALTERNATIVE OF MEDIATION

Not only in California but throughout the country the single costliest element in due process/fair hearings (apart from implementing nonpublic school placements) tends to be the fees paid for legal counsel. Although they are not a factor in every fair hearing, the use of attorneys may send the total cost into thousands of dollars. Similar reports from Massachusetts, Florida, New York and other states were found in response to queries and in the literature (NASDSE, 1978; Stevens, 1979). In the responses from California, the average cost of attorneys and the range of this cost to parents and local education agencies were comparable to those reported from other states.

The extreme range of legal costs for local agencies, from under $100 to a high of $6,222, probably resulted from differences in the source of legal counsel. Responses from local agencies did not always indicate how legal services were obtained--whether from private attorneys, for instance, or from county or district counsel--or whether in-house legal services were charged against the user agency. In some school districts the county counsel was available without direct charge; in others the cost was charged to the district. Comments by administrators suggested that for tactical reasons some districts choose outside attorneys, even though in-house counsel may be available at less cost. It seems probable that the lower levels of legal costs, under about $1,000, resulted from use of in-house staff or contract attorneys, while the higher ranges resulted from use of outside counsel. Districts anticipating the need for extensive legal services for a fair hearing may want to investigate which alternatives will provide the best possible legal service without excessive cost.

Federal and state regulations guarantee both parties the right to be represented by counsel. However, some observers have questioned whether the use of attorneys in fair hearings has any constructive value in resolving issues in special education. This view was expressed by a nonpublic school special educator and experienced panelist, explaining a preference for the panel option:

> *"In general the determination of 'appropriateness' is not a legal matter but one of professional judgment. A panel permits expert, independent professionals to use their knowledge of children and programs and realities to arrive at a decision....However, when we go to a fair hearing officer, we have a person trained in law with little or no diagnostic or teaching experience. The case then tends to become legalistic and one brings expert witnesses and independent evaluations to 'prove' the case. I believe this will become very much more involved and consequently more costly than at present."*

Similar views were held by some administrators. One noted:

> *"School personnel are ill equipped for litigation or adversary proceedings, particularly not special educators."*

If one party has legal representation, the other will be at a heavy disadvantage without it. A parent has commented:

> *"We strongly protest the decision by the state against us on our request for funds, plus we do not think it fair that we were forced to spend over $2,500 for this case since the local District had an unlimited supply of legal time and assistance with which to prepare their case. However, we simply cannot afford to continue to carry our fight with an appeal of the decision due to the legal costs involved. Unfortunately, our daughter is the loser since the funds are not available for her education!"*

The presence of attorneys apparently tends to create a more adversarial situation in either type of hearing, according to comments from parties on both sides. A parent expressed the following regret after a panel hearing:

> *"My husband and I not only feel this process is too costly, especially for the school district and state, but we also feel that the use of a lawyer is totally uncalled for. We have a very friendly, working relationship with the school district. We felt the lawyer put barriers between our relationship and must have cost the school district way too much money. It took us twice as long as necessary to reach a conclusion. The whole process seemed unwieldy and awkward. We hope you could change this procedure to a simpler, less expensive meeting....The lawyer's role was totally unnecessary."*

A study of due process in Massachusetts (NASDSE, 1978) found that fair hearings intensified antagonism between parents and school officials, that parents often reacted to the tense atmosphere of legal procedure by omitting important information in their testimony, and that they reported feeling resentment at cross-examination under oath. The study concluded that the presence of an attorney seemed to have little impact on the results of the hearing. Moreover, when due process was first being implemented in that state the tendency was for the hearing officers to be intimidated by attorneys. Later, additional inservice legal training for officers tended only to increase this deference to lawyers. The state dealt with this problem in two ways--by selecting hearing officers from the state's surplus of attorneys, and by introducing mediation procedures.

Cost was a factor in the decision to introduce mediation. The Massachusetts Bureau of Special Education Appeals found mediation financially advantageous because a mediator could handle roughly twice the case load of a hearing officer. Mediation representatives employed by that state are stationed in nine regional offices, and a mediator's manual is contained within the Bureau's official guidelines (Stevens, 1979; Moore, 1978). Massachusetts has found that while the mediation process does not eliminate the need for formal hearings, it clearly serves to screen out the majority of complaints that can be resolved at a lower, less costly level. The hearing process is reserved for the smaller number of cases where polarized differences exist between parents and education agencies, or for persistent problems which indicate a need for clear policy at the state level (NASDSE, 1978).

California has now instituted a mediation conference as part of due process procedure under SB 1870. Among other changes, the law has amended Sections 56501-56503 of the Education Code to assign the state the task of scheduling a pre-hearing mediation conference within 15 days of receiving a request for a due process hearing. Either party may waive the mediation conference if desired. The conference is to be conducted by a representative of the state superintendent. If it fails to resolve the issues to the satisfaction of both parties, the unresolved issues will form the basis for the scheduled state-level fair hearing. In the words of the law:

> "It is the intent of the Legislature that the mediation conference be an intervening, informal process conducted in a nonadversarial atmosphere." (E.C. Sec. 56503)

Several other states have introduced mediation into due process procedures (Moore, 1978). In New Jersey, child study teams with representatives from both state and local agencies may hold a mediation conference before or after a request for hearing. In Ohio mediation is offered by the state's Assistant Director for Procedural Safeguards and Due Process, who holds a pre-hearing conference whenever a hearing is requested. Fewer than ten hearings had taken place in the two years ending April 1978. Ohio also employs an Educational Placement Ombudsman who receives and resolves virtually all complaints called in to the state office of education by directly contacting all local agencies and parents. Minnesota encourages all districts to hold a conciliation conference with parents when a hearing is requested. The state provides printed guidelines but reportedly did not offer an independent mediator or mediation service as of 1978. Connecticut statute permits a mediation to take the place of a local hearing. Mediators are assigned by the State Department of Education. The parties may bring an attorney or adviser to the meeting but are encouraged to keep participants to a minimum. The goal of the mediation is open communication. If the parties reach agreement they sign a mediated contract which obligates all parties to the terms of the contract, which is written in explicit terms. If agreement is not reached within 15 days, mediation is terminated and either party may request a state hearing. According to a consultant for the Connecticut state special education service, the state has found that:

"Mediation can be less difficult and less time consuming, as well as less costly, for both parties than local or state level hearings." (Moore, 1978)

Lower cost was not specifically mentioned among the advantages of mediated agreements listed in a legal analysis of due process (Kotin and Eager, 1978, cited in Moore, 1978). However, intangible rewards are noted:

"Introduction of a mediation process into a special education due process system would involve a substantial amount of effort. Nevertheless, such effort might well be compensated for by a total process which is procedurally fair and which produces the best possible educational result....Mediation is less formal, less adversarial and less pressured than the hearing."

Kotin and Eager found that the due process hearing requires a great financial and emotional cost of the participants, and tends to be overly legalistic and narrow in focus, obscuring the goal of an educational placement which is in the best interests of the child.

In at least one of the states responding to the present study, an optional mediation process was reported to considerably reduce the number of fair hearings, hence the costs of fair hearings at state and local levels. In South Dakota, where only two or three hearings a year take place, a mediation process has kept three out of four disagreements from becoming a hearing.

However, caution is advised when anticipating lower total costs for fair hearings as a result of introducing mediation in California. As noted in Part 1 of this chapter, in Connecticut, the state where administrative changes in hearing procedures most closely parallel those of California, the trend is upward, in the numbers of hearings as well as mediations, and in the average cost and total costs for both.

Part 6. THE HIDDEN COSTS OF FAIR HEARINGS

Early in this study a panel of experts cautioned that the true costs of fair hearings were like an iceberg, with only the tip visible and susceptible to measurement. Throughout the returns this concern was reechoed by administrators and parents, some of whom have already been quoted. Following are listed the sources of hidden costs identified by observers and participants in the study. Doubtless other sources exist that are not as clearly identifiable.

1. The cost of extra care, time and effort invested by local education agencies to take every possible step to avoid fair hearings and complaint procedures -- *"Dotting every i, crossing every t,"* as one panelist put it. A county special education director who reported no fair hearings during the survey period said:

> *"All my expenses are in prevention; the county office has spent about $2,000 preventing fair hearings and $5,000 in complaint procedures growing out of fair hearing proceedings."*

And from a secondary district special education coordinator, this comment:

> *"Within our District, after four fair hearing panels and three negotiated agreements, our tendency is to cave in, give in, even when in our professional judgment, it is not in the best interest of the child. It is simply not worth the effort in terms of cost, time, and energy."*

2. The undocumented cost of time and resources expended in the steps leading up to a fair hearing, such as reassessments of pupils and the informal negotiations that begin immediately after a fair hearing is requested.

3. The cost of fair hearings undertaken as preventive measures when the easier alternative would set a precedent that could result in far heavier expenses later on. Several administrators who had experienced very costly hearings mentioned in conversation their conviction that the alternative would have been even more costly in the long run.

4. The cost of inservice to familiarize administrative, instructional and support staff with fair hearing procedures. This category includes the cost of writing, printing and revising handbooks, forms, etc.; the costs of holding and attending inservice including rooms, utilities, presenters, consultants, substitutes, and time lost for other work or personal business. It also includes the cost of holding inservice every year for retraining as the regulations change.

5. The cost in personal expenses and time lost from other responsibilities by all who volunteer their service in connection with fair hearings: panel members, expert witnesses, Legal Aid attorneys, voluntary advocates, and others, such as the panel of experts who reviewed the cost-factor matrix proposed for this study.

Part 7. AVAILABILITY AND ACCURACY OF RECORDS

Lack of precise records on fair hearings at both state and local levels made it difficult to collect data, as noted in chapter II. Systematic methods of gathering and recording statistics on fair hearings, especially on their cost, have not been instituted by the State Department of Education or by most local education agencies.

At the state level it was difficult to determine exact dates or types of hearings in some cases occurring during late fall of 1979. Before that time, only appeals were handled by the State. The confusion of records probably resulted from the addition of hearings conducted by state hearing officers and the associated additional administrative load. Subsequent reorganization of these tasks by the Office of Special Education greatly improved the state of the records. Now that panel hearings have been discontinued, record-keeping should become easier and more complete, as all fair hearings will be logged by the coordinator who assigns the hearing officers, thus solving the problem of fair hearings going unreported.

It may be desirable for the Office of Special Education to develop more comprehensive cost reporting procedures. The data analyzed in this study suggest that fair hearing costs may be grossly underreported, thus misrepresenting to the Legislature and the general public the magnitude of their true cost. For example, an average cost of $451.27 for state-level hearings was published in the Special Education Reporter of June 1980 (California State Department of Education, 1980). This figure needs careful interpretation, since it may refer only to hearing officer time and expenses. An analysis of other costs to the state (see Part 1 of this chapter) brings the average up to $1,057, a figure which does not take into account the average local education agency costs or the cost to parents and other private parties.

Cost reports sent to the State Office of Special Education by local education agencies as part of their panel hearing report (Form 794-010) required only a summary total with no breakdown of cost elements. From these reports it was impossible to determine what cost elements were included. A revised and more informative report should document the major cost categories such as personnel time, legal counsel, and implementation. A more complete report also would add the state-level costs for hearing officer time and expenses and administration.

Cost reports returned in this study from some local education agencies were incomplete because the agencies reported they had not yet received a decision several months after state-level hearings, although regulations require a written decision to be transmitted within thirty days of a petition for administrative review. The discontinuation of panel hearings and the resulting expected upsurge in officer-conducted hearings may aggravate this problem of delay unless preventive steps are taken.

On the local level, most public education agencies do not maintain cost records on fair hearings to the extent requested in this study, although many administrators expressed the need to have such information available for their own use. Administrators and fair hearings coordinators in seven large urban districts and counties replied that while they agreed wholeheartedly with the purpose of the study and the need for the data, they could not cooperate because of the difficulty of reconstructing the necessary records of time and expense. They expressed a need for a systematic but uncomplicated method of logging these costs as they occur. However, a few agencies do already maintain such a system, as indicated by their rapid response with detailed data on costs.

Finally, it should be emphasized again that in most cases, despite the unavailability of certain records, state and local agency personnel were almost invariably convinced of the need for accurate and accessible cost data at all levels, and most of them were extremely cooperative in providing whatever information was available.

REFERENCES

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Bertken, Kay; Fresno, California; personal communication, June 4, 1980.

California State Department of Education, Special Education Reporter, June, 1980.

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Moore, Jean J., and Gygi, Janice. Information packet on impartial due process procedures. Salt Lake City, Utah: University of Utah, 1978.

National Association of State Directors of Special Education. The implementation of due process in Massachusetts. Washington, D.C.: NASDSE, 1978.

Stevens, L.B. The impact of the impartial due process hearing for exceptional students in Florida 1978-79. Dissertation, University of Florida, 1979.

APPENDIX A-1: QUERY LETTER TO OTHER STATES & DISTRICT OF COLUMBIA

May 5, 1980

(This letter sent to
chief education officer
of all the states)

Decision Development Corporation has been awarded a grant by the California Board of Education to conduct a study of the costs of special education due process/fair hearing cases in California pursuant to requirements of PL 94-142.

This study will document and analyze the costs of hearings and appeals at both local and state level for local education agencies, parents, and the state. We will identify the various categories of costs for all parties, and we will attempt to determine whether the cost level of fair hearings varies according to the issue or disagreement which prompts the fair hearing request.

We anticipate that this information will help state and local agencies to more accurately project their program and fair hearing costs.

Have similar studies been conducted in your state? If so, I would appreciate any information you may have concerning these studies, or any estimates of time and/or costs of special education fair hearings and appeals which have occurred in your state.

Please have the appropriate member of your staff complete and return the enclosed response sheet. A return envelope is also enclosed for your convenience. Thank you for your help.

Sincerely,

Gerald P. Peterson
Project Manager

GPP:sa
Encl.

APPENDIX A-2: REPLY FORM FOR OTHER STATES & DISTRICT OF COLUMBIA

COST OF SPECIAL EDUCATION
DUE PROCESS / FAIR HEARING APPEALS

Please return this form to: *Decision Development Corporation*
P.O. Box 422
Davis, CA 95616

☐ NO, I know of no information or studies on the costs of fair hearings.

☐ YES, I have information on fair hearing costs and I enclose it.

☐ YES, I know of such information, and it can be found in:

☐ I am interested in your study. Please send me a copy of your final report.

This form completed by: *Name* _____

Address _____

_____

_____

Telephone _____

APPENDIX B

STATE DEPARTMENT OF EDUCATION
Office of Special Education
Form 794-010 (6/78)

REPORT OF SPECIAL EDUCATION DUE PROCESS HEARINGS

Reporting Agency _____

Date of Report _____

Superintendent/Authorized Agency _____

Person Completing Report _____

Month(s) Hearings Were Held _____

Instructions: The information requested below is required by Section 121a.508, federal regulations for PL 94-142. Please provide the information below for each special education due process hearing and submit within two weeks after completion of hearing to Gordon Duck, Executive Secretary, Commission on Special Education, 721 Capitol Mall, Sacramento, CA 95814.

A. Age of pupil subject to hearing _____

B. Hearing initiated by (circle one)

Pupil Parent School Other _____

C. Basis for appeal:

- ☐ Initial assessment
- ☐ Subsequent assessment
- ☐ Individualized Education Program
- ☐ Private school placement
- ☐ Within public school placement
- ☐ Other procedural

D. Decision in favor of:

- ☐ Pupil or parent
- ☐ Local Education Agency

APPENDIX C-1

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

May 20, 1980

TO: District and County Superintendents of Schools

FROM: DONALD R. McKINLEY
Chief Deputy Superintendent

SUBJECT: Request by the State Board of Education for a Study of the Costs of Special Education Due Process Fair Hearings

The California State Board of Education has requested that a study be made of the costs of special education due process fair hearings. The Board has awarded a research grant to Decision Development Corporation to undertake such a study. This study will document and analyze the costs of special education fair hearings to local education agencies, parents, and the State.

The results of this study will be available to school districts and county offices for their use in analysis and planning.

Although your participation in this study is not mandatory, your co-operation is encouraged. The survey instruments designed for this study have been reviewed for use by the Department's Data Acquisition Review Committee.

Specific questions regarding the study should be directed to Decision Development Corporation at (916) 753-5969.

DRM:pa

APPENDIX C-2

DECISION DEVELOPMENT CORPORATION

BAY AREA OFFICE
P.O. Box 3129
Walnut Creek, CA 94598
(415) 933-5690

SACRAMENTO AREA OFFICE
P.O. Box 422
Davis, CA 95616
(916) 753-5989

May 21, 1980

TO: District/County Superintendent of Schools

FROM: Gerald Peterson, Project Manager
Decision Development Corporation

The State Board of Education has awarded a grant to Decision Development Corporation to determine the costs of special education fair hearings in California under Public Law 94-142. This study will document and analyze costs to all parties in special education fair hearings: districts, county offices, the State and the parents of pupils.

Every California school district and county office for which a special education fair hearing was scheduled in the past six months is being asked to report all costs connected with each fair hearing. Because much of the cost may occur before the actual fair hearing, we ask that you report costs related to all special education fair hearings scheduled during this six-month period, even though the actual fair hearing may have been postponed or cancelled.

Your participation in this study is voluntary. The results may be useful to you in cost analysis and planning. Results will be published as aggregate statistics, with no identification of local agencies or individual cases. The report of the study will be available from the State Department of Education when it is completed, about September 1, 1980.

Enclosed are two different kinds of survey forms. One kind of form is to be completed by your agency and the other by the parents. If you have reported more than one special education fair hearing date in the past six months, you will receive a set of forms for each hearing. All the forms have been reviewed by the Data Acquisition Review Committee of the State Department of Education.

a) Parent Form: The names of persons involved in special education fair hearings are confidential information and thus not available to us. Therefore, we ask that you forward a copy of the parent letter and parent cost report (white form) to all parents involved in special education fair hearing cases with your agency from October 1, 1979 through May 31, 1980, along with the return envelope we have provided. One parent form should be completed for each fair hearing scheduled, even if the parents withdrew their request. Parents will not need to identify themselves or your agency in any way.

b) Local Agency Form: The form to be completed by your agency contains a cost-factor matrix on which to enter every kind of cost,

direct and indirect, generated by a special education fair hearing scheduled between October 1, 1979 and May 31, 1980. If you have had more than one case during that time, please complete one copy of the cost report for each case. These forms differ depending on whether your cases were originally scheduled for a state fair hearing officer or a local panel. Please use the buff form for local panel hearings and appeals, and the green form for those that went directly to a state fair hearing officer.

In order for the study to be most useful, the information should be as accurate as possible, with estimates of time spent by personnel and of dollar costs. Please be sure to specify the type of costs you list as "other."

Please send out the parent letter and form as soon as possible, and return your own completed cost report by June 15 in the enclosed postage-paid envelope. Your time and effort in providing this information will be greatly appreciated and will assist many other local agencies. Thank you for your help.

APPENDIX C-3

CODE _____

FAIR HEARING COST REPORT for LOCAL EDUCATION AGENCY

Legal name of local education agency (LEA)

CERTIFICATION: I hereby certify that, to the best of my knowledge and belief, the information contained in this report is correct and complete.

Signature of person completing this form	Position or title	Telephone	Date

INSTRUCTIONS: Please complete one copy of this form for each Special Education Fair Hearing scheduled or held before a state fair hearing officer during the period of October 1, 1979 - May 31, 1980. Enter both hours and dollar amounts wherever possible. Please complete both front and back of this page and return by June 15, 1980 to: Decision Development Corporation, P.O. Box 422, Davis, CA 95616. (DO NOT USE THIS FORM if the Fair Hearing was scheduled for a local panel; use buff cost report form instead.)

1. Scheduled date of Fair Hearing ____ / ____ / ____ (Month / Day / Year)

2. Did Fair Hearing actually take place? ☐ YES ☐ NO

3. Personnel Costs	Preparation for Hearing		FAIR HEARING		Follow-up and Implementation	
	Hours	Est.$	Hours	Est.$	Hours	Est.$
ADMINISTRATIVE STAFF						
a. Superintendent						
b. Director of Special Education ..						
c. Other administrative (specify)..						
INSTRUCTIONAL STAFF						
d. Teachers						
e. Resource Specialists						
f. Other instructional (specify)						
_____						
SUPPORT STAFF						
g. Psychologist						
h. Speech/Language Therapist						
i. Nurse						
j. Social Worker						
k. Program Specialists						
l. Secretarial / Classified						
m. Other support staff (specify) ..						
_____						
_____						

4. Indirect and Other Costs	DOLLAR ESTIMATES ONLY		
	Preparation for Hearing	FAIR HEARING	Follow-up and Implementation
a. Panel Members	(Not applicable)		
b. Legal Counsel			
c. Expert Witnesses			
d. Duplication of Materials ..			
e. Recording of Fair Hearing..			
f. Transcription of Hearing ..			
g. Substitutes			
h. Subpoena costs			
i. Per diem payments			
j. Travel			
k. Independent Assessment			
l. Other (specify): _____			

5. What was at issue in this Fair Hearing?

☐ a. Identification of the pupil as handicapped

☐ b. Assessment of the pupil

☐ c. Content of I.E.P.

☐ d. Placement of pupil in public school

☐ e. Placement of pupil in nonpublic school

☐ f. Other (specify): _____

6. This Fair Hearing was requested by: ☐ Parent(s) ☐ Local education agency

7. Have you added extra staff to handle fair hearings? ☐ YES ☐ NO
If YES, number of FTE: ____Certificated ____Classified

8. Please list here any cost-saving features your agency has put into practice:

9. Please list any further suggestions for reducing the cost of Fair Hearings and appeals while still meeting due process requirements:

THANK YOU for taking the time to provide this information.

LOCAL PANEL FAIR HEARING COST REPORT for LOCAL EDUCATION AGENCY

Code _____

CERTIFICATION: I hereby certify that, to the best of my knowledge and belief, the information contained in this report is correct and complete.

Legal name of local education agency	Signature of person completing form	Position or title	Telephone	Date

INSTRUCTIONS: Please complete one copy of this form for each Special Education Fair Hearing scheduled or held before a local fair hearing panel during the period October 1, 1979 - May 31, 1980. Enter both hours and dollar amounts wherever possible. Use left columns of matrix for original panel hearing, and right columns only if panel decision was appealed. Please complete both front and back of this page, and return by June 15, 1980 to Decision Development Corporation, P.O. Box 422, Davis, CA 95616. (DO NOT USE THIS FORM if there was no local panel; use green FAIR HEARING COST REPORT instead.)

1. Scheduled date of Fair Hearing ____/____/____ (Month / Day / Year)

2. Did Fair Hearing actually take place? ☐ YES ☐ NO

2a. Was decision of local panel appealed? ☐ YES ☐ NO

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APPENDIX C-4

3. Personnel Costs	LOCAL PANEL FAIR HEARING						APPEAL OF LOCAL PANEL DECISION					
	Preparation for Hearing		FAIR HEARING		Follow-up and Implementation		Preparation for Hearing		FAIR HEARING		Follow-up and Implementation	
ADMINISTRATIVE STAFF	Hours	Est.$	Hours	Est.$	Hours	Est.$	Hours	Est.$	Hours	Est.$	Hours	Est.$
a. Superintendent												
b. Director of Special Education												
c. Other administrative (specify)												
INSTRUCTIONAL STAFF												
d. Teachers												
e. Resource Specialists												
f. Other instructional (specify) _____												
SUPPORT STAFF												70
g. Psychologist												
h. Speech/Language Therapist												
i. Nurse												
j. Social Worker												
k. Program Specialists												
l. Classified / Secretarial												
m. Other support staff (specify) _____												
_____												

9

DECISION DEVELOPMENT CORPORATION

BAY AREA OFFICE
P.O. Box 3129
Walnut Creek, CA 94598
(415) 933-5690

SACRAMENTO AREA OFFICE
P.O. Box 422
Davis, CA 95616
(916) 753-5969

May 21, 1980

Dear Parent,

This letter is being sent to all parents of California pupils involved in a special education due process fair hearing since October 1, 1979. It is part of a study that is being conducted for the State Board of Education by Decision Development Corporation to determine what the costs of special education fair hearings are for school districts, counties, the state, and the parents.

The results of the study will be available to the public when it is completed, about September 1, from the State Department of Education.

School districts and county offices are being asked to report their fair hearing costs as part of this study. We also want to find out how much special education fair hearings may cost the parents. We would like to know what your expenses were even if your fair hearing was postponed or cancelled.

The names of individuals in special education fair hearing cases are confidential information known only to officials of your local school district or county schools office. Therefore, we have asked them to forward this survey to you, along with the enclosed return envelope addressed to Decision Development Corporation.

Your help will make our study results more accurate and more complete. However, you are not required to take part. If you do, you will not have to identify yourself in any way. Simply fill out the cost report form and return it in the enclosed envelope before June 15. No postage stamp is needed. Thank you for your help.

Sincerely,

Gerald Peterson

Gerald Peterson
Project Manager

CODE_____

APPENDIX C-6

PARENT COST REPORT

1. Scheduled date of Special Education Fair Hearing _____ / _____ / _____ .
   Month Day Year

2. Did the Fair Hearing actually take place? ☐ YES ☐ NO

3. Which type of Fair Hearing? (check one) ☐ Local Fair Hearing Panel
   ☐ Hearing by State Fair Hearing Officer

4. If it was a local panel, was the decision appealed to the State? ☐ YES ☐ NO

5. *For each item below, please estimate as well as you can both the number of hours you spent and your cost in dollars. Some items may not apply to your case; please put a zero down for these. The first two columns are for time and money spent on the Fair Hearing itself, whether it took place before a local fair hearing panel or a state fair hearing officer. Fill in the last two columns only if the decision of your local fair hearing panel was appealed to the State Department of Education.*

COST TO PARENT	FAIR HEARING BY LOCAL PANEL OR BY STATE HEARING OFFICER		APPEAL OF DECISION OF THE LOCAL FAIR HEARING PANEL	
	Hours	Estimated cost in $	Hours	Estimated cost in $
Work time lost by parent or guardian				
Child care costs				
Transportation costs				
Attorney fees & expenses ...				
Parent advocate				
Expert witnesses				
Subpoena costs				
Secretarial or clerical				
Duplication of materials ...				
Independent evaluations: Educational				
Psychological				
Medical				
Other costs (please list): _____				

APPENDIX D

DECISION DEVELOPMENT CORPORATION

BAY AREA OFFICE
P.O. Box 3129
Walnut Creek, CA 94598
(415) 933-5690

SACRAMENTO AREA OFFICE
P.O. Box 422
Davis, CA 95616
(916) 753-5969

June 25, 1980

Dear Parent,

This letter comes to you as part of an effort to contact the parents of all California pupils involved in a special education due process fair hearing since October 1, 1979. You may have already received a similar letter and survey form, forwarded to you by your local school district or county office. If so, this form is a duplicate and can be thrown away.

The State Board of Education has asked Decision Development Corporation to conduct a study of the costs of special education due process fair hearings for the state, the school districts and counties, and the parents of pupils.

We have asked school districts and county offices to report their costs for fair hearings. We also need to hear from parents about their costs. However, the names of individuals in special education fair hearing cases are confidential information and not available to us. For this reason we asked local school districts and county offices to forward this survey to the parents of pupils in recent fair hearings. This second mailing comes by way of the California Association of Private Special Education Schools, which has offered to help contact parents who may not have received our first letter.

Your report of your costs will make our study results more accurate and more complete. However, you are not required to take part. If you do, you will not have to identify yourself in any way. Simply fill out the cost report form and return it in the enclosed envelope, by July 11 if possible. No postage stamp is needed. We would like to know what your expenses were even if your fair hearing was postponed or cancelled.

The results of the study will be available to the public when it is finished, about September 1, from the State Department of Education. Thank you for your help.

Sincerely,

DECISION DEVELOPMENT CORPORATION

Gerald Peterson

Gerald Peterson, Project Manager
Sacramento Area Office

APPENDIX E

FAIR HEARINGS COST REPORT: Office of Special Education

This report is completed by personnel of the Office of Special Education, California Department of Education. It represents the total costs to the state government of administering all fair hearings by state fair hearing officers and all administrative appeals of fair hearing panel decisions during the period October 1, 1979 through May 31, 1980.

PERSONNEL COSTS	STATE HEARINGS		STATE APPEALS	
	Hours	Est.$	Hours	Est.$
Coordinator				
Fair Hearing Officers				
Legal Counsel				
Secretarial				
Other (specify) _____				

OTHER COSTS--STATE HEARINGS ONLY	Coordinator	Hearing Officers	Legal Counsel	Secretarial	Staff (general)
Recording/Transcription					
Duplication of Materials . . .					
Per Diem Payments					
Travel					
Office overhead					
Other (specify) _____					

OTHER COSTS--STATE APPEALS ONLY	Coordinator	Hearing Officers	Legal Counsel	Secretarial	Staff (general)
Recording/Transcription					
Duplication of Materials . . .					
Per Diem Payments					
Travel					
Office overhead					
Other (specify)					

APPENDIX F

PARENT COST MATRIX

The following matrix shows the adjusted mean for every cost item reported by parents. The adjusted mean represents an average computed after dropping the highest figure reported for each item, in order to eliminate distortion of the mean by an unusually high isolated extreme.

Figures in italic type represent cost items reported by fewer than one-third of the parents responding.

COST TO PARENT	FAIR HEARING BY LOCAL PANEL OR BY STATE HEARING OFFICER		APPEAL OF DECISION OF THE LOCAL FAIR HEARING PANEL	
	Hours	Estimated cost in $	Hours	Estimated cost in $
Work time lost by parent or guardian	14	$ 336	*7*	$ 156
Child care costs	*5*	*$ 20*	*4*	*$ 7*
Transportation costs	3	$ 23	---	$ 21
Attorney fees & expenses ...	---	*$1,837*	---	*$ 175*
Parent advocate	9	$ 237	*6*	$ 163
Expert witnesses	5	$ 148	*6*	*$ 75*
Subpoena costs	---	*$ 56*	---	---
Secretarial or clerical	*8*	*$ 59*	*5*	---
Duplication of materials ...	*2*	$ 16	*1*	$ 5
Independent evaluations: Educational	8	$ 198	--- ---	*$ 150*
Psychological	*5*	$ 595	---	*$ 500*
Medical	*2*	*$ 180*	---	---
Telephone & postage	---	*$ 18*	---	---
Other consulting	*32*	*$ 164*	---	---
Miscellaneous	*16*	*$ 21*	---	---

THE COST OF SPECIAL EDUCATION DUE PROCESS FAIR HEARINGS AND APPEALS IN CALIFORNIA

EXECUTIVE SUMMARY

The costs of procedural due process/fair hearings have created a new drain on the administrative budgets of public education agencies since the enactment in 1975 of Public Law 94-142, the Education for All Handicapped Children Act. The dimensions of this financial stress in California were unknown because there has been no systematic method of reporting these costs. Education agencies and parents have expressed the need to reduce the costs of fair settlement of disputes over identification, evaluation, placement or free appropriate education of children with exceptional needs.

The purpose of this descriptive study was to document the costs of fair hearings in special education to the parents, the local education agencies, and the state government. In addition to summarizing total costs, the study analyzed the issues prompting fair hearings, the distribution of cost elements, and the comparative costs of panel hearings, officer-conducted hearings, and state administrative appeals. Policy implications are discussed and recommendations made for reducing fair hearing costs and improving the recording and dissemination of information on costs.

Information was collected from three main sources: the State Office of Special Education, local education agencies, and the parents of pupils involved in fair hearings. Some cost information was also collected from other states for purposes of comparison. A computer search was undertaken that revealed no other studies devoted specifically to costs of fair hearings.

The investigators developed a cost-factor matrix, submitted it to a panel of experts for review, and sent it to all school districts and county offices of education in California that had reported a fair hearing during the eight-month period from October 1979 through May 1980. A similar cost-factor report form was distributed to the parents by courtesy of the local education agencies and the California Association of Private Special Education Schools.

Conferences with staff in the Office of Special Education yielded access to the initial data base of 170 fair hearings, aided in interpreting the records, and provided information on fair hearing costs at the state government level. Raw data from parents and local education agencies were processed to yield ranges and means for each cell in the cost-factor matrix.

The products of the study include the cost-factor matrix which will assist local education agencies and parents in estimating potential costs and recording actual costs for fair hearings, and a report of findings and recommendations for action by local education agencies and the Department of Education.

SUMMARY OF FINDINGS

Part 1. State Government Costs

1.1 The Office of Special Education conducted approximately 102 fair hearings and 44 appeals during the period October 1, 1979 through May 31, 1980. An additional 35 fair hearings were scheduled but withdrawn by the initiating party.

1.2 The costs of hearings conducted by state hearing officers were not recorded separately from costs of panel hearing appeals and so have not been analyzed separately. However, appeals are assumed to make up a smaller proportion of total costs than hearings because they were fewer and easier to process. Appeals have been discontinued by SB 1870.

1.3 The Office of Special Education reported total personnel costs for fair hearings and appeals during the eight-month study period were $141,800, of which $86,638 was for hearing officer services and $18,236 for hearing officer expenses. Remaining personnel costs included the fair hearings coordinator and secretary, contract administration, and legal counsel. Nonpersonnel costs for fair hearings over the same period, including indirect costs charged by other state units, were $12,520, bringing total state government costs to $154,320, or an average $1,057 per state-level hearing or appeal.

1.4 Costs are expected to increase under SB 1870. The elimination of panel hearings increases the work load of state hearing officers and other personnel. Required mediation conferences necessitate employing and training mediators. The experience of another state with similar fair hearing procedures (Connecticut) suggests that both costs and numbers of hearings and mediations in California may be expected to rise in the next few years.

Part 2. Issues in Fair Hearings

2.1 The most frequently reported issue prompting fair hearings was payment by public education agencies for nonpublic school placement. However, multiple issues were reported in almost one-third of the fair hearings. No general correlations of issues with costs were possible. Implementation costs were highest for public agencies in hearings where the issue was nonpublic school placement, especially in residential settings.

Part 3. Costs to Parents

3.1 State-level hearings conducted by hearing officers were, on the average, six times more costly than panel hearings for the parents responding to this study. The mean cost to parents for 15 hearing officer hearings was $2,681, compared with $411 for 21 panel hearings and $166 for 9 appeals. (These figures are adjusted means, computed after dropping

the highest cost report in each of the three categories.) There is some evidence that hearing officer hearings may be more legalistic and adversarial than panel hearings, provoking each party to spend more in trying to match the other's defense.

3.2 The highest average cost elements for parents were attorney and advocate fees, independent evaluations, and time lost from work. Other frequently reported costs were expert witness fees, transportation, duplication of materials, and telephone and postage. Other costs less frequently reported were child care, subpoenas, secretarial service, private school tuition, and additional consultations, including psychological counseling.

Part 4. Costs to Local Education Agencies

4.1 Hearings conducted by state hearing officers cost local education agencies more on the average than did hearings conducted by a panel. The adjusted means were $3,541 and $2,322 respectively. Although additional organizational costs for panel hearings were reported, they were not a major cost element either in terms of direct expense or in time spent by personnel.

4.2 Local education agency staff spent more time on state officer hearings than on panel hearings; the adjusted means were 84.9 and 67.4 staff hours, respectively. Personnel costs reflect this difference; the adjusted mean total personnel cost was $1,474 for officer hearings, compared with $1,067 for panel hearings.

4.3 In most local education agencies the Director of Special Education or person with equivalent position spent more time than any other one person on all phases of fair hearings. Other personnel spending large amounts of time in most local agencies were,approximately in descending order, teachers, psychologists, classified staff, miscellaneous administrative staff, program specialists, and speech and language therapists. A few agencies also reported principals heavily involved. Superintendents were frequently involved but did not average more than six hours per hearing. Nurses and social workers were seldom involved.

4.4 Major nonpersonnel costs included legal counsel, panel members' fees and expenses, independent assessments, and occasional high implementation costs, usually tuition and/or other expenses connected with nonpublic school placement. Other nonpersonnel expenses reported were substitutes, expert witnesses, duplication, recording, transcription, travel, telephone and postage.

4.5 One very large school district ("X") accounted for nearly one-third of the fair hearings in the data base and was analyzed separately. This district selected six representative fair hearings with reported costs averaging $437, and one appeal that cost $152. These reports do not include indirect costs charged by other departments, such as legal services. The district has assigned a psychologist full

time as fair hearings coordinator and has added one full-time classified employee for fair hearings work. The district estimated some 80 fair hearings had taken place during the eight-month study period, only 35 of which had been recorded by the state Office of Special Education. If the six cases selected were representative, the total cost for the eight-month study period was $36,037. This figure is based only on the average of the six cases reported plus estimated appeal costs. It does not include any other direct or indirect costs.

4.6 Certain cost-saving features were reported already in use by local education agencies. Preventive measures included negotiation, compromise, willingness to make adjustments and reassessments, involvement of other public agencies, parent education, and open communications with nonpublic schools. Procedural measures included using on-call legal counsel, eliminating attorneys, using written evidence instead of testimony, holding hearings during office hours, and making travel serve multiple purposes.

4.7 Other measures were suggested by local education agencies to further reduce costs. Preventive measures included improving home-school communication and trust; willingness to modify to meet student and parent needs; sharing cost-saving information; using mediators. Agencies wanted the State Department of Education to expedite decisions, provide knowledgeable legal counsel to local agencies, and hire hearing officers with knowledge of the laws. They suggested that hearing officers reduce irrelevant and repetitious testimony and clearly define the issues. Legislative and regulatory changes suggested were to clarify regulations, abolish panel hearings, use arbitration, define admissible evidence more clearly, improve eligibility criteria, and stop all changes for two years. A suggestion applying to all local education agencies was -- be adequately prepared.

Part 5. Legal Counsel and Mediation

5.1 Legal counsel tends to be the single costliest element in fair hearings for local education agencies and parents. However, it was reported as a cost factor only in about half the fair hearings in this study.

5.2 The cost of legal counsel varied from zero up to thousands of dollars, depending on its source. Besides private attorneys, parents consulted free or low-cost Legal Aid attorneys, friends, or parent advocates with legal expertise. Local education agencies consulted county or staff counsel, attorneys serving on contract, or private outside attorneys. Private attorneys tended to be the most expensive option but at times may have provided the optimum level of legal service, according to the reports.

5.3 Mediation has been found to reduce legalism, adversarial pressure, and emotional stress on participants, while still preserving procedural fairness and producing the best possible educational result. California law (SB 1870) now requires that a state-conducted mediation conference precede every fair hearing unless one party requests that it be waived.

Part 6. Hidden Costs

6.1 Due process/fair hearings generate high costs at several levels of government and society. Those documented in this study represent only the tip of the iceberg. The hidden costs are not easily measured or even, in some cases, fully identifiable. Nevertheless they exist and must be noted in any cost analysis. They include the extra care, time and effort invested to avoid fair hearings; the time and resources spent in preliminary negotiations, reassessments and other steps leading up to hearings; the cost of preventive fair hearings to avoid setting costlier precedents; inservice to outline procedures and update them when regulations change; writing, printing and revision of handbooks and forms; and personal expenses and time lost from other responsibilities by public employees and private persons.

Part 7. Availability of Records

7.1 Systematic methods of gathering and recording statistics on the cost of fair hearings have not been used by the State Department of Education or the majority of local education agencies. A need for such methods has been expressed by administrators at state and local levels.

RECOMMENDATIONS

The following recommendations are made in response to needs identified in the responses to and findings of this study:

Local Education Agencies

1. To reduce the likelihood of costly fair hearings, local education agencies should direct efforts toward improving home-school communication and two-way information flow, building trust between school personnel and parents, and showing willingness to negotiate, compromise, reassess pupils and modify programs and policies. Communications with other public agencies and with nonpublic schools should also be kept open. Every effort should be made to avoid an entrenched position or adversarial confrontation.

2. To implement Recommendation 1, inservice should be held for all personnel who may become involved in fair hearings, with emphasis on developing effective techniques for confict resolution and human relations skills, as well as a review of current regulations and timelines.

3. To reduce actual fair hearing costs, local agencies should adhere to required timelines, fully document all steps in the instructional planning process, prepare adequately for conferences and hearings, and use written evidence as much as possible.

4. To insure that costs are minimized without sacrificing optimal legal services, local education agencies should review procedures for obtaining legal counsel. Strategies might include employing staff counsel, contracting with counsel for the county or other public agency, or contracting with private attorneys.

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5. To insure comprehensive projections of state costs, the Office of Special Education should review its cost reporting procedures for fair hearings and develop procedures for monitoring the cost of mediations. It may be advisable to develop a method of recording the distribution of major costs for every hearing, including local agency costs for personnel time, legal counsel and implementation, as well as the state's administrative, indirect, and hearing officer costs.

6. To obtain comprehensive cost estimates and to meet a need of local education agency administrators, the Office of Special Education should consider developing and making available to local agencies a standardized system for recording fair hearing costs as they occur, including estimates of staff time spent on each step of the process.

7. To meet the need of local education agencies for sharing information on cost reduction and effective procedures, the Office of Special Education should explore means of coordinating the dissemination of such information to local agencies.

8. To reduce the delays reported in the release of fair hearing decisions and meet the timelines prescribed by law, the Office of Special Education should review its procedures for processing fair hearing decisions.

9. To resolve questions about the qualifications and performance of some hearing officers, the Office of Special Education should consider re-evaluating standards for hearing officers and offering further training in procedural skills and knowledge of changing regulations.

10. The finding that the cost of transcribing hearings in California is much lower than in other states suggests that the Office of Special Education should continue its policy of transcribing hearings only when it is required.

11. In view of SB 1870 having eliminated panel hearings and instituted mediation conferences, the Department of Education should expect both a greater number of fair hearing requests and higher costs for processing fair hearings and mediations.

12. To reduce the legalistic and adversary quality of due process procedures as well as the overall costs, the Office of Special Education should continue to implement as fully as possible the mediation conference now prescribed in California law and should strongly encourage local education agencies and parents to participate in the mediation conference.